

UK COMPONENT OF THE THREE COUNTRY [NIGERIA, UAE & UK] COMPARATIVE STUDY ON FIXING ILLICIT FINANCIAL FLOWS [IFFs]¹

SECTION 1

1. PROBLEM OF THE STUDY

1.0: Introduction and Rationale of the Study

The UAE and the UK are key financial jurisdictions with global economic and political relevance. Both states are very much connected to the economies of African states and they are indeed regarded as development partners to many African countries including Nigeria. There is a rich history of business connections between Nigeria and these target states and they share extensive, contemporary political and diplomatic relationships. Thus, the UAE and the UK offer excellent case studies in understanding the problem of illicit financial flows (IFF) from Nigeria. The banking and financial institutions as well as Designated Non-Financial Businesses and Professions (DNFBP) in the UAE and the UK are arguably of central importance to Nigeria's economic and financial fortunes. This is very much the case in terms of Nigeria's consumer behaviour in foreign banking, financial services, property investment and other international business transactions.² Big business and indeed the Nigerian wealthy elites invest heavily in financial deals in both countries. These include systematic and prolific participation in the acquisition of real property, corporate investments, shares ownership and transactions relating to tourism, entertainment, education and health services. In this manner, vast amounts of illicit wealth including corporate profits disappear into both the UAE and the UK never to meaningfully return to the benefit of Nigeria. Asset recovery is sometimes practically impossible despite the provisions of international laws. This is despite the impressive reputations maintained and enjoyed by both the UK and the UAE in the international system. These leading jurisdictions and Nigeria itself have an ever-increasing array of sophisticated domestic legal instruments. In

¹ Being country specific summary of the Fixing Nigeria's Illicit Financial Flows: A Critical Review of UK and UAE Policies, Laws and Practices in Financial and Professional Institutions, by Dr. Gbenga Oduntan and Dr. Iris Boussiakou

² Financial institutions in this work means any natural or legal person who conducts as a business one or series more of the following activities or operations for or on behalf of customers: 1. Acceptance of deposits and other repayable funds from the public.⁵⁹ 2. Lending.⁶⁰ 3. Financial leasing.⁶¹ 4. Money or value transfer services.⁶² 5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money). 6. Financial guarantees and commitments. 7. Trading in: (a) money market instruments (cheques, bills, certificates of deposit, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity future trading. 8. Participation in securities issues and the provision of financial services related to such issues. 9. Individual and collective portfolio management. 10. Safekeeping and administration of cash or liquid securities on behalf of other persons. 11. Otherwise investing, administering or managing funds or money on behalf of other persons. 12. Underwriting and placement of life insurance and other investment related insurance. 13.

addition, all three states are parties to some of the most impressive anticorruption and transparency treaties, conventions, standards and other soft laws.

The problem of IFF is a global phenomenon that particularly compounds and depletes the economic fortunes of developing states across the world in ways that ought to command the attention of law and development scholars. This problem is arguably under-discussed in multidisciplinary analysis. This study, however, concentrates on the manifestation of the IFF challenge in deliberately narrow confines. It focuses on a socio economic and critical legal analysis of the international money laundering and other IFF problems based on the triangular transactions linking Nigeria, the United Kingdom and the United Arab Emirates.

The central problem of this study, therefore, and its major opportunity of contribution to existing literature lies in its comprehensive identification and treatment of legitimate solutions to one of the most important global challenges of the 21st Century.

1.1: Significance of Study

The significance and usefulness of this study to Nigeria in the 21st Century are many but we will identify a few below. First, it will identify and focus on those industries and professionals that top the bill in attracting and enabling money laundering, grand corruption and illicit business in relation to Nigeria. Second it will expose the various techniques through which, perhaps the top quintile of Nigeria's illicit financial flows disappear into the black hole of institutions and investments in the UK and the UAE among others. Thirdly, the study will indicate what needs fixing in the anticorruption and general business regulatory environments in both the UK and the UAE as development partners of Nigeria as well as in Nigeria itself. Fourthly, the study will elaborate upon some of the shortcomings in international anti-IFF, policies and practice as well as the imperative changes needed in international laws and international relations to slow down, prevent and stop further flows.

1.2: Methodology of Research and Plan of Study

The methodology of this study is based on empirical research. The analysis in addition is influenced by critical legal theory as well as socio-legal theory. The adoption of socio-legal research method in this study involved interrogation of laws and policies as social phenomena.³ This methodology adopts the view that law and legal rules cannot be interpreted and understood in pure abstraction. Hence for a more robust framework from within which a clearer elucidation of the failings of the current national AML / CTF systems, both the socio-legal and critical legal treatment of the topic are germane. The national and sectoral nature of the analysis means that

³ See the following: R Wacks, *Philosophy of Law –A very short Introduction* (2ndedn, OUP 2014); A Riles, “New Agenda for the Cultural Study of Law: Taking on the Technicalities” (2005) 53 (3) *Buffalo Law Review* 973-1033.

patterns and cross-references involving the three concerned jurisdictions are constantly being utilised in elaborating the issues dictate the adoption of aspects of the comparative research method as well. The distinctions and relationships between developed and developing states in international relations are used in analysing various points and elaborating issues at various points.

1.3: Justification of the study

Vast movement of IFF from Nigeria to the UAE and the UK among other more developed states is an undeniable reality of contemporary international life. Nigeria currently, grossly underperforms economically and scores extremely low on development indicators. The country has weak state institutions, manifests capacity gaps for regulation and suffers considerable security challenges. The justification of the study therefore, rests on the need to arrest the massive financial bleeding of the country's resources that has afflicted its economic fortunes and prevented the country's ability to attain the Millennium Development Goals (MDGs) during the target period. The problems are escalating and increasing real poverty at an unprecedented level while also threatening the likelihood of attaining the Sustainable Development Goals (SDGs).⁴

1.4: Scope and Limitation of Study

The scope of this enquiry will include primarily the problem of domestic money laundering and grand corruption and the interactions between local and foreign actors in the target countries. Also of primary interest to the study are the contributions of multinationals and other big businesses to the IFF problem afflicting Nigeria among other developing states. The study will cover manifestation of IFF in both the private and public sectors but will lay emphasis on large companies in the formal sector. These will include corporations engaged in services, agriculture, hydrocarbons, mining, and manufacturing. The category of institutions of interest to this study will include national institutions, multinational corporations, banks, as well as legal and accounting firms that operate in several countries, including those, which are of Nigeria origin.

⁴ The Sustainable Development Goals are the internationally agreed blueprint to achieve a better and more sustainable future for all human populations. They address global challenges such as poverty, inequality, climate, environmental degradation, prosperity, and peace and justice. It is recognisable that the goals interconnect. In order to leave no one behind, the aim is to achieve each Goal and target by 2030. A/68/L.61 - GA takes action - Report of the Open Working Group on Sustainable Development Goals available at https://www.un.org/ga/search/view_doc.asp?symbol=A/68/L.61&Lang=E
Illicit Financial Flow Report of the High Level Panel on Illicit Financial Flows from Africa P. 2 Available at https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf accessed 05/04/2020.

SECTION 2

2. IFF AND THE UK: SOCIOLEGAL AND REGULATORY CONTEXTS.

2.0: The UK: A familiar spirit of imperialism and a principality and power in the sphere of IFF.

Relaxed rules on ownership are geared towards rich foreigners. Armies of lawyers and public-relations firms specialise in rinsing reputations. Tough libel laws help keep prying journalists and NGOs at bay. On top of all this, Britain has its own network of secretive offshore territories, dubbed its “second empire” by anti-corruption campaigners. London is, in short, ideal for money-laundering.⁵

The UK is a political union made up of four constituent countries: England, Scotland, and Wales on the island of Great Britain and Northern Ireland with a population of about 66.4 million people with migration being the main driver to population growth. Largely regarded as the fifth-largest economy in the world and the second largest in Europe after Germany, before Brexit, it is the sixth-largest overall by purchasing power parity (PPP) exchange rates.⁶ Although operating as a single jurisdiction, the country is actually divided into three distinct legal jurisdictions: Scotland, Northern Ireland, and England and Wales. Scotland for instance, operates a hybrid system based on both common law and civil law principles. The UK is a full party to many important anti-corruption treaties and instruments these include: the UN Convention against Corruption on 14 February 2006; the Council of Europe Criminal Law Convention on Corruption; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“the OECD Convention”).

IFF and Financial crimes link Britain to Nigeria in quite significant ways and dealing with these problems is a large and pressing problem for authorities in both countries. Despite this fact, there is a dearth of research materials focussing on these issues. Financial crime by Nigerians in Britain has grown in significance. The type of criminality involved here include, advance fee and internet frauds, cheque frauds, other mail frauds, credit card frauds, immigration and identity paper frauds, official and corporate corruption. These criminal activities, actually involve only a small minority of the estimated one million Nigerians that British authorities believe live in the UK.⁷ In other words, the number of Nigerians involved in financial crimes in the UK is

⁵ The Economist, “Dirty capital: London’s financial flows are polluted by laundered money Time to clean up” *Economist Magazine* Oct 11th 2018 available at <https://www.economist.com/leaders/2018/10/11/londons-financial-flows-are-polluted-by-laundered-money> accessed 15 08 2019.

⁶ Third Mutual Evacuation Report Anti-Money Laundering and Combating the Financing of Terrorism: The United Kingdom Great Britain and Northern Ireland, 29 June 2007 pp. 13 available at <https://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20UK%20FULL.pdf> accessed 05/04/2020.

⁷ Estimates of Nigerians in the UK by Jack Straw in a speech in Abuja, 14 February 2006. See www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&

minuscule relative to the size of the country and the number of Nigerian nationals, resident or visiting the country. As a result, the actions of rogue traders from Nigeria in the private sector or fraudsters is not regarded as a priority area by UK authorities. On the other hand, the interaction between corrupt public officials in Nigeria and British companies operating in Nigeria has also not been receiving the attention that is usually accorded to threats like terrorist financing, drugs and people-trafficking.

2.1: The UK's Warped Self Image on Corruption.

The predominant opinion in scholarly and journalistic writing is that corruption is endemic in places like Africa,⁸ the Middle East and parts of Asia.⁹ Although there are western writers who note the universality of the problem of corruption, the phenomenon is largely seen as a self-contained developing state issue.¹⁰

The truth is that the UK has a massive problem of corruption like all modern human societies. British national life exhibits multiple forms of corruption some of them have been criminalised through statutes while others, such as revolving door arrangements are just illicit in nature but overlooked in legislation. Then there are ways through which the UK's margin of appreciation of illicitness affects the interests of other states. An example here would be the country's reputation of accepting a high number of PEPs facing corruption charges corrupt with open arms.

c=Page&cid=1007029391647&a=KArticle&aid=1138872197692; Peel op.cit., pp. 3, 7 -17.

⁸ The aim of becoming rich quickly is perhaps rightly seen as the hallmark of many African politicians since political independence. Reasons adduced for this situation include the fact that political leadership in places like Africa is a precarious activity that forces candidates to feel obligated to secure their positions by distributing patronage and favours and in various ways reward followers, divert rivals, co-opt opponents and appease warring factions. Ian Senior, *Corruption – The World's Big C* (Westminster: Profile Books Ltd, 2006) 19; Robert Williams, *Political Corruption in Africa* (Dartmouth Publishing Company, 1991) 28, 102.

⁹ China is the one of many Asia countries where corruption is a serious issue of the government. Many factors account for this, such as what Lu terms the 'organisation involution' of the Chinese Communist Party (CCP). Certainly with the increasing involvement of foreign businesses in the Chinese economy comes the danger of bribery of state officials and the many manifestations of grand-business corruption. Michael Johnston, 'Corruption in China: Old Ways, New Realities and a Troubled Future' (Lecture delivered at the St Aidan's College in Durham, 2006) 6 and 12 <unpan1.un.org>; Xiaobo Lu, *Cadres and Corruption: the Organisational Involution of the Chinese Communist Party* (Stanford University Press, 2000) 368; Jim Yardley, 'New Analysis: China's Boon in Corruption' *The New York Times*, 22 October 2006, available at <<http://www.iht.com/articles/2006/10/22/news/china.php>> accessed on 20-02-2020.

¹⁰ See, John T Noonan, Jr, *Bribes* (MacMillan Publishing Company, 1984) 702.

2.2: Aspects of the Theory of Deliberate Exploitation of IFF as an instrument of Enrichment and control over the Global South.

2.2.1: Postcolonial Strategies of domination through financial entrapment.

The demise of the British Empire brought Britain's commercial interests across the globe into jeopardy.¹¹ The apparent challenge for succeeding governments in the country was how to retain as much imperial advantages as possible without being obvious about it. The role of the UK was to continue draining out countries like Nigeria with as little detection as possible. However, the hands of the UK in draining Nigeria can indeed be seen by peeling back the slim veneer that shields much of the mucky business out of sight. First, we have to consider the account of insiders that there is a groupthink that runs island havens, which actually originates 'in bigger global power networks led by Britain'.¹² Accounts of such strategies include orchestrating capital flight, shifting capital out, grand tax evasion, "the really nasty stuff".¹³

There is a well-traversed view of modern history that says that at the end of the British Empire: lawyers, accountants and Bankers from the City of London set up a spider's web of offshore secrecy jurisdiction, which by design has succeeded in capturing financial wealth from across the globe and funnelled same to the city of London. This was part of a neo-colonial project by which "countries formally gained independence but the old colonial master states found ways to stay in control behind the scenes."¹⁴ The transformation of Britain from a colonial power to a modern financial power was thus, not accidental but in fact carefully orchestrated business survival plan the success of which has in turn succeeded in transformation the world we live in.

By the early 1980s the main elements of the modern offshore system were in place, and growing explosively. An older cluster of European havens, nurtured by European aristocracies and led by Switzerland was now being outpaced by a network of more flexible, aggressive havens in the former outposts of the British Empire, which were themselves linked intimately to the City of London. A state within the British state, the city had been transformed ...into a brasher deregulated global financial centre dominated by American banks and linked intimately to the new British spider's web"¹⁵

It needs be said that London was not alone in this and other areas of western influence were in on the actions that have effectively been draining the newer states like Nigeria.¹⁶ Similarly, a less complex yet extremely effective and important offshore zone of influence grew in the US

¹¹B. R. Tomlinson "The contraction of England: National decline and the loss of empire", 11 *The Journal of Imperial and Commonwealth History*, (1982)1; WM. Roger Louis & Ronald Robinson "The imperialism of decolonization", 22 *The Journal of Imperial and Commonwealth History* 3, (1994) 462.

¹²Shaxsonop.cit., p. 182.

¹³ John Christenssen, former Jersey economic adviser who turned dissident quoted in Shaxson *ibid* p. 183.

¹⁴ Nicholas Shaxson, *Treasure Islands: Tax Havens and the Men who Stole the World*, (London: The Bodley Head, 2011) p. 2.

¹⁵Shaxson *ibid* . p. 147.

¹⁶ *Ibid*.

constructed by American Banks. The stateless Euromarkets effectively served to link up the patchwork of western game board with each other and the onshore economies helped to free banks from the reserve requirements and other regulatory and practical which ought to have been restraints on their behaviour

The apparent truth is that with the same detailed ruthlessness that the entire colonial enterprise was constructed by Great Britain the ascendancy of UK as a global financial power was executed through a series of easy to trace mechanisms, schemes and practices, which has made the country perhaps the most successful financial power given its start off position.

By the time, the experience of the Second World War wrecked its havoc on the UK and the Suez Canal crisis signified the possible end of Britain as one of the world's major military and financial powers. Financiers withdrew their money from the sinking ship Britain had become and the value of the pound rapidly decreased. Through a series of highly effective financial orchestrations, the UK has vastly improved its lot and enriched the country's banks arguably at the expense of other mostly poorer states. This is so much that today London has attained 25% of the global financial market along with its offshore jurisdictions, coming ahead of New York, at 19%.

Firstly, it started by limiting the banks overseas lending. By an unwritten yet very effective law, British banks acted in concert. If banks intermediated between two non-residents in a foreign currency, the dollar was adopted as the intermediate value currency and the Bank of England would not be consider these particular deals as having been conducted under its own jurisdiction.¹⁷ In this way, the London-Eurodollar Market was created and banks assisted the process by keeping two sets of accounts to differentiate Euromarket activities from domestic banking activities.¹⁸

Secondly the Bank of England, the UK regulator, declared from the mid-50s that the London Euromarket accounts were in fact not in London, but are 'elsewhere' hence England had no responsibility for regulating them. An oasis was thus, created at the heart of the English speaking Western world allowing just enough space for gung-ho, friendly and loosely regulated banking practices. This created enough attraction for foreign banks largely from the US to move to London as the new financial centre. The third strategy was to franchise out and internationalise the more dastardly operations to certain carefully chosen jurisdictions.¹⁹

¹⁷ Information and material about the Bank of England are available at <https://www.bankofengland.co.uk/>

¹⁸ Interview with Alex Cobham, Director Tax Justice Network on The Spider's Web An investigation into the world of Britain's secrecy jurisdictions and the City of London by Michael Oswald and John Christensen available at https://www.youtube.com/watch?v=np_ylvc8Zj8&t=4023s accessed 08/04/2020.

¹⁹ With the aid of novel institutional forms of hybrid Anglo-American financial strategies, governance of the Euromarkets was orchestrated and this played a defining role in the law and politics of globalisation. Apart from the 'primary centers' such as London or New York. 'booking centers' such as the Bahamas or the Cayman Islands specialised as 'registration havens' for Euromarket transactions. There are then the 'funding centers', such as

Accountants and lawyers were more or less dispatched from London to choice destinations in the former colonial empire such as the Cayman Islands and other British dependencies. They drafted a set of financial secrecy laws and regulations much of which in effect remains till today. Being far from Britain there was no hiding the intention as the Islands and dependences were touted to the entire world as secrecy jurisdictions. To be more precise there are 14 of these overseas territories.

In these ways and through these devices the UK has facilitated advertently and inadvertently illegal activity, drug money, tax evasion and grand corruption across the world.

Both at home in London and abroad a lot of damage is been done to the economies of other nations and peoples and the Bank of England sits on top of the food chain observing the rot abroad in its spider web jurisdiction and pretending much of the activity is not really taking place.

2.2.2: Ignoble Role of the City of London:

The City of London is a financial district (a city within a city, a stated within a state) which is run by City of London Corporation. London is literally a law unto itself when it comes to its ability to regulate financial rules. London's ability to attract capital from across the world with ruthless efficiency and very little care as to its sources is also a notorious fact in international business and financial law as well as international political relations. The City of London Corporation is run as a private company performing all of the functions of a local council. It is equipped with its own private police force and private courts and its formidable power is perhaps best expressed in the former Prime Minister, Clement Attlee, quote:

“There is another power within the country: London City Corporation. A convenient term for the collection of financial interests who is able to assert itself against the government of the country. Those who control the money can pursue a policy at home and abroad contrary to that which is decided by the people.”²⁰

Singapore and Panama, that funnel Euromarket funds into regional financial centers. Furthermore 'collection centers' like Bahrain also engage in channelling regional funds into the Euromarket from which London again benefits. See Jeremy Green, “Anglo-American development, the Euromarkets, and the deeper origins of neoliberal deregulation”, *Review of International Studies*, January 2016, pp 1 and 2; R. Palan, “The Second British Empire: The British Empire and the reemergence of global finance”, in: S. Halperin & R. Palan (Eds.), *Legacies of Empire Imperial Roots of the Contemporary Global Order*. (Cambridge, UK: Cambridge University Press, 2015) pp. 6 and 7.

²⁰ Cited in Piolet, Vincent. "The City of London: Geopolitical Issues Surrounding the World's Leading Financial Center", *Hérodote*, vol. no 151, no. 4, 2013, pp. 102-The City of London up until today is exempt from laws that govern the rest of Britain. Its political system date back to the middle ages. The City's electorate is not dominated by its residents but by the private businesses operating in the City. They have a representative in the House of Commons called the Remembrancer (apart from the clerks, he is the only unelected member in the House) The City of London has a representative in the House of Commons, whose role is to report back to the City of London

The Bank of England has historically performed a highly successful sheltering role for the city of London. The BoE in conjunction with the diplomatic might of the UK afford the City of London all the latitude it needs to retain a top position in attracting wealth from around the globe nearly at all costs.²¹

It is therefore, not surprising that some of our findings below show that in both the UK and the UAE, a certain ‘marked lack of curiosity’ of bank supervisors and regulators coupled with reckless acts of traders still afflict their banking industry today.²²

2.2.3: Political Will and Undulating Practise of UK Cooperation against IFF.

The UK is seen as a very responsible member of the International community. The UK has endeavoured to keep its image clean through a number of varied strategies such as international diplomacy, active domestic legislative development and enthusiastic engagement in international law making. It therefore appears that the UK is keen to address inwards and outward flows of IFF. In other words, there is a formal appearance of political will to combat bribery, money laundering and all aspects of corruption. Yet there is a widespread impression of poor performance by the UK in this vital area

For the UK in particular as an IFF prone developing state, the law and practice of asset forfeiture, freezing and seizure needs much more clarity.²³ The activation of these important legal devices by foreign states should be much more user friendly.

Corporation and to lobby Parliament on behalf of the City. Piolet, Vincent. "The City of London: Geopolitical Issues Surrounding the World's Leading Financial Center", *Hérodote*, vol. no 151, no. 4, 2013, pp. 102-

²¹ Deborah Dsouza, “How London Became the World’s Financial Hub”, available at <https://www.investopedia.com/how-london-became-the-world-s-financial-hub-4589324> accessed 24 Sept 2020; Margaret Reid, “All-Change in the City: The Revolution in Britain’s Financial Sector”, (Macmillian Press, 1988) pp 1-20.

²² Pp. 15 and 16.

²³A freezing injunction is an interim order which prohibits a party from disposing of or otherwise dealing with its assets. Freezing (formerly ‘Mareva’) injunctions; and search and seizure (formerly ‘Anton Piller’) orders are discretionary and therefore may be refused if, in all the circumstances of the case, the court considers it inappropriate to grant relief. The aim of this legal device is to prevent a defendant from hiding, moving or otherwise unjustifiably dissipating its assets so as to render itself judgment-proof or the result of an investigation nugatory. The order is therefore typically sought by a claimant to preserve the defendant’s assets until any judgment can be obtained or satisfied. Freezing injunctions can be deployed at any stage in proceedings, including after judgment has been given. In appropriate cases, a freezing injunction can be made in respect of assets outside the UK jurisdiction. This will be indeed, a worldwide freezing injunction may be granted to prevent the defendant from dissipating assets located abroad. The requirements for such injunctions are essentially the same as the requirements for domestic orders. One notable difference relates to the defendant’s assets. The comments of Field J in *USA v Abacha & Others* [2014] EWCA Civ 1291, and other case law suggest that where there are allegations of international fraud, English courts may in recent decades have become more willing to assist a foreign claimant whose claim lacks a territorial connection to England and Wales. See also *Mobil Cerro Negro Ltd v Petroleos De Venezuela SA* [2008] EWHC 532 (Comm) at paragraph 155; [2014] EWHC 993). An order for delivery-up of passport can also be made with a freezing or search and seizure order. In these cases the defendant is obliged to deliver his/her passport to the

2.2.4: The Exploitation and Use of Trusts

A special place must be reserved in this discussion for the exploitation of the mechanism of trusts - especially offshore jurisdictions trusts. The trust system lies at the core of the Britain's business secrecy model. While Switzerland runs perhaps the most sophisticated secrecy jurisdiction, Britain has put the trust model to the most profitable use and has cornered a phenomenal share of the financial market using widespread practice of the trust model. Indeed trusts are the main block of Anglo-Saxon secrecy model and are used to form the basis upon which offshore structures are created. Trusts can 'shroud assets in cast-iron secrecy'²⁴ and are correctly described as follows:

“The trust structure has facilitated the global spread of financialization: by privileging the rentier–investor within the world economy; by perpetuating a distinctively Anglo-American approach to finance internationally; and by increasing the autonomy of finance vis-à-vis the nation-state”.²⁵

2.3: Aspects of the Legal Regime against Bribery and Political Corruption in context of TBML.

2.3.1: Aspects of The Serious Fraud Office's work on foreign bribery.

It is unfortunate that many British multinationals' operations in Nigeria may have systematically incorporated bribery and corruption practices as part of their routine way of doing business in Nigeria. Bribery, however, also features prominently in IFF losses connected to commercial activities, which accounts for 65 per cent of IFFs. In other words, bribery oils the machinery of TBML, market abuse, conflicts of interests, regulatory abuse and tax evasion.

It is therefore, important for us in a study like this to examine the offence of bribery through the prism of UK laws and in their international context. An examination of the UK Bribery Act 2010 is perhaps the best prism through which legislative progress, law and practice may be measured. Similarly, an examination of the use of the Bribery Act (2010) through the work of the SFO is crucial towards understanding how foreign bribery can be reduced and the reputation and integrity of the UK as an international financial centre maintained.

supervising solicitor until the court orders otherwise. The aim is to ensure that the defendant cannot leave the jurisdiction, and applies pressure to comply with the court's principal orders. The effectiveness of this order on junior and senior employees of multi-national companies have been attested to in literature. See generally Latham & Watkins, Simon Bushell & James Davies, “England & Wales”, *European Lawyer Reference Series* pp, 140, 141 and 143, 146 -147 and 154. Available at <https://www.lw.com/thoughtLeadership/ifat-eng-and-wales> accessed on 23 November 2020.

²⁴Shaxson, 2011, p. 42.

²⁵ Brooke Harrington, “Trusts and financialization”, *Socio-Economic Review*, Volume 15, Issue 1, January 2017, pp. 31–63.

The SFO as a specialist prosecuting authority within the UK criminal justice system tackles top level serious and complex fraud, bribery and corruption. The SFO was created and given its powers under the Criminal Justice Act 1987 and was established in 1988. The SFO works with other law enforcement partners including the National Crime Agency's Economic Crime Command, International Corruption Unit and Bribery and Corruption Intelligence Unit; The City of London Police, including its Economic Crime Directorate, Action Fraud, and the National Fraud Intelligence Bureau; UK police forces and Regional Organised Crime Units, Regional Asset Recovery Teams and Regional Fraud Teams; HM Revenue & Customs and The Financial Conduct Authority. It also works collaboratively with UK Government departments, the Attorney General's Office, the Home Office and Ministry of Justice, and other overseas partners, including the US Department of Justice.²⁶

2.4: A decade of the Bribery Act 2010: metaphor for motion without movement.

This subsection thus, interrogates the effectiveness of British law generally and the Bribery Act 2010 particularly, in addressing the mischief of bribery by its corrupt business class in their operations in Nigeria and other parts of the developing world. The prevalence of the use of bribery by British firms in Nigeria particularly is shown in the statement that:

London is increasingly attacked for alleged hypocrisy in failing to keep its promises to crack down on British corruption in Africa. Privately, British business people admit corruption is still commonplace: one British executive working in the oil industry says his company routinely pays immigration officials a bribe worth between 20 and 30 per cent of the cost of expatriate resident permits.²⁷

In many ways it can be demonstrated that the UK has deliberately left the pace of development of its anti-bribery laws in a state of underdevelopment for as long as possible and arguably still does so even now. The underdevelopment of antibribery and corruption laws persist despite the UK parliament periodically unleashing brand new shiny legislation, which often may form a distraction from continuing or newer mischief.

2.5: THE MONEY LAUNDERING LAW AND PRACTICE OF THE UK –PROBLEMS AND PROSPECTS.

Just as the UK parades a plethora of laws against bribery and corruption the regime against money laundering is also eclectic and complex.²⁸The principal money laundering legislation in

²⁶Koehler, Mike, A Conversation with Richard Alderman - Director of the United Kingdom Serious Fraud Office (October 4, 2010). Available at <https://ssrn.com/abstract=1687299> or <http://dx.doi.org/10.2139/ssrn.1687299> accessed 22 Sept 2020.

²⁷ Peel op.cit., pp. V –VI.

²⁸ In 1997 at the time the *OECD Convention* was adopted, the UK already had anticorruption law spread across a number of sources - common law and a number of statutes. These include the *Public Bodies Corrupt Act 1889*, the

the UK are to be found in Part 7 (ss 327-340) of the Proceeds of Crime Act 2002 (POCA). The principal money laundering offences including concealing, arrangements, acquisition, use and possession are in ss 327–329. Reporting offences covered in ss 330–332 with just one exception, apply to those operating in the “regulated sector”. POCA also makes it an offence to conspire, incite, aid abet counsel or procure the commission of the principal offences of money laundering. It is also important to highlight certain provisions such as S. 18 in Part 3 of the Terrorism Act 2000 concerning terrorist financing. Regulated firms are covered by the regulatory framework provided by the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017)²⁹ as amended by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (MLR 2019),³⁰ which transposed the Fifth Money Laundering Directive (5MLD) into UK law. The scope of application of MLR 2017 include individuals and regulated bodies such as financial institutions lawyers, tax advisers, estate agents, accountants and art dealers. The provisions of MLR 2017 impose certain key requirements such as customer due diligence, stringent policies and procedures, adequate record keeping and controls.³¹

The Financial Action Task Force Review of the UK Anti-money laundering and counter-terrorist financing measures published in December 2018 highlighted an inconsistent level of AML compliance across the professional bodies, including the relatively low level of suspicious activity reports (SARs) outside of the financial sector.

2.5.1: Impact of EU Law and the potential damage of Brexit.

It will appear from our discussions in several parts of this work, that Britain leads the world in money laundering and tax avoidance. This not only invites more criminal operators towards the jurisdiction but it means that honest actors are disadvantaged. In very many respects, the EU law has acted as a restraining influence of the worst impulses of UK institutions to harbour sharp business and investment practices that may aid IFF. The EU Anti-tax avoidance Directive was given birth to. This lifestyle is not only damaging to all countries but wrecks particular havoc on developing states. Brexit will probably put the UK out of the Tax avoidance Directive. By so doing, Brexit is likely to give a new lease of life to those who desire a tax-free lifestyle.

The greatest impact of Brexit may however, lie in its implications for international anti-moneylaundering law and practice. The UK’s many decades long membership of the EU and the effects of the overriding principle of subsidiarity means that its regime of respect for anti-money

Prevention of Corruption Act 1906 and the *Prevention of Corruption Act 1916*. The UK law covered both active and passive bribery (*Public Bodies Corrupt Act 1889*), and applied to both private and public sector bribery (*Prevention of Corruption Act 1906*). The definition of public body in the 1889 Act was widened by the *Prevention of Corruption Act 1916* so that local and public authorities of all descriptions could be included.

²⁹ UK Statutory Instruments 2017 No. 692.

³⁰ UK Statutory Instruments 2019 No. 1511. The MLR 2019 came into force on 10 January 2020.

³¹ John Gibson and Tim Harris, “The Crime of Money Laundering and Criminal Enforcement” in *Anti-Money Laundering 2020 A practical cross-border insight into anti-money laundering law* Third Edition (London: Global Legal Group, 2020) p. 209.

laundering and other anticorruption rules are intimately connected to the EU's relatively developed regime for anti-corruption law and practice. Importantly the EU's compliance with the FATF recommendations through EU directives that member states have had to transpose into national law has brought the UK's national regime in these areas up to international standards.

2.5.2: Obtaining Consent to Prosecute.

The general view of the authors is that the system of obtaining consent for bringing prosecution for corruption crimes in the UK is still open to criticism to the extent that it allows too much ambit for political considerations and interferences. Under UK law, certain corruption prosecutions are subject to consent from the Attorney General.³² This feature of the legislation has been correctly criticised by the influential Group of States against Corruption (GRECO). According to the Group's evaluation, a review by a law officer such as the Attorney General could easily become a tool of political control.³³ These fears have indeed being borne true by the record of controversies surrounding the various BAE scandals and the controversial withdrawal of the investigation of the Saudi Arabia investigation by the Serious Fraud Office (SFO) with the resultant damaging effect this has caused to the image of the UK in political and legal terms.³⁴ As a result of these criticisms there have been some changes to legislation and the issue of consent. However, some offences of bribery, for example under the Public Bodies Corruption Act 1889 and the Prevention of Corruption Act 1906, may still not be prosecuted without the Attorney General's consent.³⁵

³² Section 1 of the Law Officers Act 1997 enables the Solicitor General to grant consent as well as the Attorney General.

³³ Formed by the Council of Europe in 1998 – Resolution 98(7) of 4 May 1998. The UK is an active member of GRECO. See, Review of Implementation of the Convention and 1997 Recommendation Phase I Bis Report at <<http://www.oecd.org>> accessed on 20-02-2020.

³⁴ As a writer put it the incidence has become one of the 'admittedly unpalatable yet unavoidable aspects of international trade'. The '...never-ending story of the alleged BAE Systems' corruption scandal over the "AI Yamamah"' and the political fallout has been typified as close to 'sheer delirium'. Bonsignore, above n 13, 8-9. See also, ASIL, 'Brief Notes, US Launches Investigation of Large BAE Systems Contract with Saudi Arabia, Protests Dropping of UK Investigation' (2007) 101(3) *American Journal of International Law* 670-671; Elsa McLaren and Andrew Ellson, 'Saudi Arabia: Saudi "slush fund" Investigation Discontinued', *Times UK* (online) 14 December 2006 <<http://www.timesonline.co.uk/tol/news/article754650.ece>> accessed on 20-02-2020.

³⁵ The procedure for obtaining consent by the requisite authorities within the country include that upon agreement on strategy and policy and that it is appropriate to seek consent, applications would be addressed to the Deputy Director, Criminal Law, Attorney General's Office, 5-8 The Sanctuary, London SW1P 3JS consents@attorneygeneral.gov.uk. Applications must be made in a timely manner to allow Law Officers sufficient time of consideration. Timing may however vary according to the complexity of the case. Since 'custody' cases generally take priority, prosecutors would apply through Strategy and Policy to the Attorney General's Office as soon as it is realised that consent is required. Inordinate delays may affect the public interest consideration. See SFO, "Consent" *SFO Operational Handbook* available at <https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/sfo-operational-handbook/consents/> accessed 05 Dec 2020

2.5.3: The UK Mutual Legal Assistance Treaty System.

A mutual legal assistance treaty is a treaty, which creates a binding obligation on the treaty partners to render assistance to each other in criminal investigations and proceedings. It is also described as a treaty which typically provides for the direct exchange of information between two “central authorities”.³⁶

The network of MLAs between countries can have a multiplier effect on making the international system less welcoming of bribe givers, money launderers and other corrupt persons. International bribery and corruption investigations involving Nigeria, the UAE or UK, are often connected to the USA jurisdiction as well because of the rampant extraterritorial jurisdiction of the US under its FCPA.

2.5.4: UK national risk assessment of money laundering and terrorist financing.

The fact that the UK conducted its first money laundering and terrorist financing National Risk Assessment (NRA) in just 2015 is in many ways unsatisfactory given its history as a significant force in international finance as well as international commercial relations. In a sense the recentness of conducting such an essential task by a country that has had a worldwide notorious image as a magnet for international wealth and a successful financial centre speaks to the possibility of the deliberateness of apparent regulatory oversight failures. The assessment aimed at identifying, understanding and assessing the money laundering and terrorist financing risks faced by the UK. The assessment recognised that both money laundering and the criminality, which, drives the need for money laundering and present significant risks to a modern country, like the UK. The acknowledgement that “billions of pounds of suspected proceeds of corruption are laundered through the UK each year” and that “laundering of proceeds of overseas corruption into or through the UK fuels political instability in key partner countries” sums up the progress that has been made in recent years. The findings of the NRA are very relevant to this study and we would consider its key findings.

2.5.5: Incompetent professionals in the regulated sector.

The story of the problems in the UK regulatory sector is not complete unless account is taken of incompetent professionals in the regulatory sector. While the majority of those working in the regulated sector are not complicit in money laundering or terrorist financing, there are those who negligently aid the occurrence of money laundering. The role of the non-compliant or negligent professional in aiding illicit financial flows especially in money laundering cannot be overstated. Such staff have over the years caused significant harm, reputational damage and the lowering of standards in their profession.

³⁶ James I.K. Knapp, “Mutual Legal Assistance Treaties as a Way to Pierce Bank Secrecy” 20 *Case W. Res. J. Int'l L.* (1988) p. 405.

The UK certainly has to embark on a series of changes to its AML regime and must plug training and intelligence gaps, particularly among those associated with ‘high end’ money laundering in the financial and professional services sectors.

2.5.6: Differentiated Regulatory Competence among Police Forces.

The different police forces in the UK exhibit differentiated attention span and indeed competence towards dealing with international money laundering. International money laundering operations has not been a priority for most local police forces (although the metropolitan forces appear to provide a more effective response).³⁷ This has prompted the UK government since 2012 to invest in developing the capabilities of Regional Organised Crime Units (ROCU).

2.5.7: Problems with the Suspicious Activity Reports Regime.

Suspicious Activity Reports (SARs) are a special reporting technique that are deployed to alert law enforcement to potential instances of money laundering or terrorist financing activities. They may be compiled by financial institutions, solicitors, estate agents and accountants among many others. SARs are a vital source of intelligence not only on economic crimes, but also in relation to a wide range of criminal activities. These reports provide valuable current intelligence and other general information from several relevant areas of the private sector without which a lot of significant crimes and anomalies would otherwise be undetected by official bodies. They are a critical intelligence resource and provide useful raw data including email addresses, phone numbers, addresses, company details, investment activity, bank accounts and details of other assets. They can also provide information that is crucial in identifying terrorist financing among others.

2.5.8: Inadequate Infrastructure.

The 2016 government review also stated that both the banks and law enforcement agencies viewed the UKFIU’s technical infrastructure and resources as “inadequate”. Glaring infrastructural deficiencies have created shocking lapses and scandalous revelations have become all too often regular. Nigeria indeed sued for damages up to \$875,740,003 against JP Morgan Chase (JPMC) for alleged breach of fiduciary duty and breach of trust in relation to JPMC’s handling of the Escrow Accounts that were set up to receive funds arising from the OPL 245 deal. The Escrow Accounts were stated to be illegal under Nigerian law. The US banking giant JP Morgan claimed in court that the UK’s anti-money laundering authorities in an unbelievable blunder gave them consent to transfer \$875m to a convicted money-launderer. These sort of shortcomings are completely out of order for a country like the UK and arguably fits into the theory of deliberateness to its failures on the IFF front.

³⁷ This is hardly surprising given that the skills of municipal police forces lie in investigating mundane crimes such as burglary, murder, etc. and not in complex financial dealings.

2.5.9: Innovative Strategies to Stop the Flow.

We ought now to consider the main features of the UK's money laundering legislation and show its strengths and weaknesses with a view of arriving at recommendations for the future. It suffices to begin by noting that the requisite laws are largely comprised of legislation derived from the EU Third, Fourth and Fifth Money Laundering Directives.³⁸ Although there are complaints about the burdens of compliance, the better view is that there are significant benefits to a regulated and safer financial system than an underregulated system. This may, however, not prove to be easy to communicate particularly to the business and financial sectors in many countries.

2.5.10: New Beneficial Ownership Regime.

Beneficial ownership rules in full operation properly, adequately and accurately documents the actual ownership of the person or persons who ultimately own or control an asset (for example, a property or a company) and benefit from it. In the 21st century, registers of beneficial ownership, provide the much-needed transparency in the business and property ownership sectors. This in turn affords the law an important tool in the fight against corruption, tax evasion and money laundering. As Thom Townsend and Jose Marin correctly advocate, "If we are to stop corruption, everyone must know who they are doing business with.... Beneficial ownership information is critical to ending the shadow economy, ending tax avoidance, tackling money laundering and fighting against organised crime."³⁹

While credence must be given to the UK for finally incorporating this important law into their financial system, it must be realised that this law took too long in coming into realisation. The plundering of the wealth of peoples and countries especially those in the global south was facilitated by slow moving and slow reacting national and international legislative systems.

2.5.10.1: *The Trust exemption "Justification"*

Further criticisms of the piecemeal approach to the introduction of the beneficial ownership transparency policy is to be found in the fact that trusts are exempted from the requirement of disclosure of beneficial ownership. As of yet, the unconvincing logic advanced is that

"Trusts do not have legal personality in their own right and so are not capable of entering into contracts. They are also commonly used for reasons including protecting assets for

³⁸ Tim Edmonds, "Money laundering law" Wednesday, February 14, 2018 <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN02592> accessed on 20-02-2020.

³⁹ Stop the Shell Game, *The Observer: News and Views from Organisation in the Civil Society Coalition Observing the UNCAC COSP8*, issue 2, 18 December 2019 p.1.

children and vulnerable adults, meaning that legitimate grounds exist for ensuring that information on the beneficial owners of trusts is not made publicly available.”⁴⁰

There is some solace in the provisions of EU law in the form of the Fifth Anti-Money Laundering Directive, which allows members of the public to be able to access trust data if they can demonstrate a legitimate interest. Thus, a journalist investigating corruption or money laundering in theory may be able to gain access through that route.⁴¹ The effects of the EU directives may, however, evaporate in a post Brexit United Kingdom.

2.5.10.2: Registrable Leases.

It is commendable that the new register will apply to overseas owners of all registrable leases. Not doing this would have created a significant gap in legislation allowing scope for much mischief. Indeed, the proposal as at 2017 was that overseas owners of registrable leases for a 21+ year term would need to comply (as well as freeholders). The intention at the time was to capture ‘significant leases’ where there is capital value. The UK government has however settled for the position that all registrable leases will be caught.

2.5.11: Legal Practitioners UK.

Prior to now, there was recognition that legal practitioners can claim client confidentiality over a very wide scope of communications. This provided an unfortunate cover for unscrupulous legal practitioners to assist dodgy clients in hiding their wealth in the UK. Under the new legal regime, concerning beneficial ownership the legal privilege of confidentiality is lost where the communication is over a criminal or fraudulent purpose. In fact both LAP and litigation privilege may be lost if the communication in question was created for furthering criminal or fraudulent purposes or acts.⁴²

2.6: Anatomy of Banking Regulation that ought to prevent Illicit Financial Flows into UK.

It is important for a study like this to evaluate the rules, institutions and arrangements that govern the banking and financial industry of the UK. If these institutions and rules lived up to the expectation of those who crafted them into existence then much of the failings that we see today including the illicit flows into the UK’s financial system would not have been possible. The primary source of legislation governing the financial industry in the UK is the Financial Services

⁴⁰ KPMG, “Register of beneficial owners of overseas entities owning UK land” available at <https://home.kpmg/uk/en/home/insights/2018/08/tmd-register-of-beneficial-owners-of-overseas-entities-owning-uk-land.html>. accessed on 20-02-2020.

⁴¹ Transposed into UK Law in the form of the Money Laundering and Terrorist Financing (Amendment) Regulations 2019.

⁴² Andrew Smith, Ashley Pigott and Teresa Edwards, “UK: The Basics: Does Legal Professional Privilege Apply To All Communications with or Through a Solicitor?” 29 July 2019 <https://www.mondaq.com/uk/CorporateCommercial-Law/830584/The-Basics-Does-Legal-Professional-Privilege-Apply-To-All-Communications-With-Or-Through-A-Solicitor> accessed on 20-02-2020.

and Markets Act 2000 (FSMA) which also sets out the regulatory objectives for each of the pertinent regulators.⁴³ Other related national rules, EU laws and regulations set up other minimum requirements and standards for the regulation of banks and banking services in the UK⁴⁴.

2.6.1: UK Banking Regulatory Authorities.

The regulation of banks in the UK is undertaken by three main regulators. The Bank of England (BoE),⁴⁵ Prudential Regulation Authority (PRA) (a division of the Bank of England (BoE));⁴⁶ Financial Conduct Authority (FCA).⁴⁷ It is important to also mention the work of the Financial Policy Committee, which has the primary responsibility of identifying, monitoring and taking action to remove or reduce risks with the view to strengthen and increase the effectiveness of the UK banking system.⁴⁸ The PRA and the FCA are the lead bank regulators whereas, the BoE is the resolution authority with primary responsibility for regulatory intervention and exercise of resolution powers in relation to banks that are failing or likely to fail.⁴⁹ For banks, the PRA is the prudential regulator and the FCA the conduct regulator. In 2013, the PRA and FCA together replaced the Financial Services Authority (FSA), the UK's predecessor regulator.⁵⁰ The BoE's Financial Policy Committee (FPC) is responsible for macro-prudential regulation of the UK financial system and has powers to make recommendations to the regulators in certain

⁴³ 2000 c.8ff available at <http://www.legislation.gov.uk/ukpga/2000/8/contents> accessed on 06/04/2020. The Act makes provision about the regulation of financial services and markets; to provide for the transfer of certain statutory functions relating to building societies, friendly societies, industrial and provident societies and certain other mutual societies among other connected purposes.

⁴⁴ Bob Penn, Allen and Overy, "Banking Regulation in the UK", Thomson Reuters, Practical Law available at <https://uk.practicallaw.thomsonreuters.com/w-008-> Thomson Reuters,0211?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1 accessed on 16 03 2020.

⁴⁵ Information and materials about the Bank of England is available at <https://www.bankofengland.co.uk/>

⁴⁶ The Bank of England prudentially regulates and supervises financial services firms through the Prudential Regulation Authority (PRA). Information and materials about the Prudential Regulation Authority (PRA) is available at <https://www.bankofengland.co.uk/prudential-regulation> accessed 06/04/2020.

⁴⁷ The Financial Conduct Authority is the conduct regulator for 58000 financial services firms and financial markets all over the UK and the prudential regulator for over 18,000 firms. <https://www.fca.org.uk/> accessed 06/04/2020.

⁴⁸ The Bank of England's Financial Policy Committee (FPC) identifies, monitors and takes action to remove or reduce systemic risks with a view to protecting and enhancing the resilience of the UK financial system.). Information and materials about the FPC is available at <https://www.bankofengland.co.uk/about/people/financial-policy-committee> accessed 06/04/2020.

⁴⁹ Bob Penn, Allen and Overyop.cit.

⁵⁰Ibid.

circumstances. According to the FSA, the PRA and FCA shared overall responsibility for the supervision, enforcement and rule-making and regulatory policy for the following matters: (a) authorisation, (b) prudential matters and (c) conduct of business.⁵¹

2.6.3: Appropriate and effective whistleblowing arrangements.

Where there is a culture of due diligence backed up with an active history of whistleblowing culture money laundering and facilitation of IFF by banks and FIs will further diminish. The absence of appropriate and effective whistleblowing arrangements can only compound the problem of IFFs in the UK. This is why banks are under a duty to separate the duties of individuals and departments with a view to decrease opportunities for financial crime or violation of regulatory requirements and standards (for example, front-office and back-office duties should be segregated to prevent a single individual initiating, processing and controlling transactions). In the same context, responsibility must also be separated and distinguished in such a way that ensures that banks comply with their duties on conflicts of interests, remuneration structure as well as the prevention of market abuse.⁵²

2.6.4: Risk management rules for banks.

UK banks are under a duty to comply with certain risk management rules.⁵³ A bank needs to be able to identify, manage, monitor and report actual or potential risks through adequate risk management policies and procedures and risk assessments.

As such, specific risks relating to the risks of money laundering, corruption and financial crimes that a bank must plan for are as following:

- Operational risk: the risk of loss arising from failures of internal processes, people and systems or even from external events.
- Group risk: the risks arising from any or all exposures to parent, subsidiary and even affiliate companies.
- Reputational risk: the risk of adverse impacts occurring on the bank's reputation.

2.6.5: Issue of ethics in banking and finance.

It is our view that the failure of the UK banking industry to prevent wide scale problems in the financial system of the country is a failure of ethical standards among practitioners especially

⁵¹ Ibid.

⁵²The General Organisational Requirements also implement the Capital Requirements Directive IV (CRD IV) organisational requirements for the management body, such as board composition and time commitments and, in the case of significant firms, limits on the number of additional directorships and a requirement to have separate risk, nomination and remuneration committees. See also EditeLigere “UK: Banking Regulation Comparative Guide” Mondaq 19 August 2020.

⁵³ Bob Penn, Allen and Overypop.cit.

those in the highest leadership positions. There are many examples of such failures indicated in this work but emphasis may be made of the allegations of how JP Morgan branch went ahead to transfer \$875m to a convicted money launderer even though the bankers perhaps ought to have known the ex-minister involved was an ex-convict and is linked to the beneficiary firm in a Nigeria oilfield deal.⁵⁴

Despite frequent spectacular failures there are basic but clear guidelines for bankers and individuals working in financial institutions in the UK. UK banks have a code of ethics operating under a set of internal guidelines drawn up with a view to commit employees and practitioners to operate legally and in a manner to promote honesty, accountability and ethical conduct. Special note must be taken here of the Chartered Banker Code of Professional Conduct, developed for the members of the Chartered Banker Institute. Banking codes of ethics are very important because an effective ethical framework constitutes a firm basis to lay the foundations for, and strengthen, both the culture and conduct of an organisation.⁵⁵ Ethical principles can inform both strategic decisions and day-to-day interactions, establishing a set of core values and principles, which set out how an organisation should operate. However, whether or not an institution does operate in a way which is informed by its ethical values and principles needs to be examined by reference to its daily conduct.

The existing Code is however, consistent with the terminology in the FCA/PRA Individual Conduct Rules⁵⁶ and is seen as exceeding regulatory requirements by setting out how individuals should follow best practice and also demonstrate their personal commitment to professionalism in banking.⁵⁷

The burning question then is why in a developed country like the UK ethical codes are not implemented to the best of standards? What are the institutional drivers that side-line compliance generally and ethics codes?

⁵⁴ JP Morgan has always and continues to deny any wrongdoing. The Bank admitted it knew it was paying the money to a company associated with Etete and that he had a money laundering conviction, however, it says it complied fully with UK anti-money laundering through a series of Suspicious Activity Reports. Opeoluwani Akintayo, “Malabu scandal: 4 Nigerian officials named as authorising \$875m payment to Etete”, *Sweet Crude Reports* April 14, 2018 available at <https://sweetcrudereports.com/malabu-scandal-4-nigerian-officials-named-as-authorising-875m-payment-to-etete/> accessed on 05 12 2020. For Etete’s convictions see *Public Prosecutor’s Office v. Etete Granier-Deferre* 11th division/1 Case No. 0226992507 Judgment dated November 7, 2007 no.1. See also *Public Prosecutor’s Office v. Dan Etete and Richard Granier-Deferre*, Judgment, Paris Court of Appeal, March 2009 File no. 07/11397 Judgment no. 1 Paris Court Of Appeals 9th Division, Section A.

⁵⁵ Felicia Dye “Code of Ethics for Bankers.”, website of the Houston Chronicle available <https://work.chron.com/code-ethics-bankers-22345.html> accessed 06/04/2020.

⁵⁶ Rule 1: You must act with integrity. Rule 2: You must act with due skill and care and diligence. Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators. Rule 4: You must pay due regard to the interests of customers and treat them fairly.

⁵⁷ <https://www.charteredbanker.com/uploads/assets/uploaded/5e917c8b-7bc6-45ed-a43287ee7466612b.pdf> accessed 07 Dec 2020.

2.7: Dictates of the FATF Recommendations to the UK Banks and Financial Institutions.

Given the guidance provided to the UK under the FATF Recommendations the entire gamut of UK FIs and DNFBPs are expected to be managed and run by competent authorities and practitioners including banking supervisors. Accordingly, the level of failure to detect and prevent wide scale leaking of Nigeria's funds into the UK is virtually inexcusable. The situation is especially inexplicable given that the UK is widely regarded as a world class, financial and developed legal jurisdiction. UK Banks and their operatives are expected to identify, assess and understand the ML/TF risks to which they are exposed in various forms of transactions with Nigeria. Looking at our analysis in this work thus far, they are collectively failing in respect of these obligations. The updated FATF Recommendations of 2012 further strengthened global safeguards and increased the demands for protection of the integrity of the financial system by providing governments with stronger tools to take action against financial crimes.

2.8: Results and Implications of the 2018 UK-FATF Peer Review process.

In 2018, the Financial Action Task Force (FATF) completed its last assessment of the implementation of anti-money laundering and counter-terrorist financing standards in the United Kingdom of Great Britain and Northern Ireland (UK). Among its major findings were:

The UK has a comprehensive legal structure to combat money laundering and terrorist financing. The money laundering offences are broad, and the number of prosecutions is increasing. The terrorist financing offence is also broad. There are comprehensive powers to restrain, confiscate, and recover proceeds of crime, and to freeze and seize terrorist-related assets. Overall, the UK FIU, housed within the Serious Organised Crime Agency, is now an effective FIU. Currently, the main deficiencies for customer due diligence (CDD) lie in the fact that certain requirements, such as beneficial ownership, are not laid out in law or regulation. The situation will be improved with the implementation of the Third EU Money Laundering Directive later in 2007. The Financial Services Authority (FSA) has extensive powers to monitor and ensure compliance by the firms it regulates. While the supervisory system is comprehensive for the larger firms, supervision of small firms requires enhancement. All designated non-financial business and professions (DNFBPs) as defined by the FATF are currently covered. There is generally comprehensive monitoring of casinos, lawyers, and most accountants; the deficiencies lie in the lack of monitoring for the real estate and company service provider sectors, which will be supervised with the implementation of the Third EU Money Laundering Directive.⁵⁸

⁵⁸ FATF, Mutual evaluation of United Kingdom of Great Britain and Northern Ireland (2007) available at <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mutualevaluationofunitedkingdomofgreatbritainandnorthernireland.html> accessed 06/04/2020.

Despite all the issues and shortcomings rising from the last FATF study on the UK highlighted below, when the FATF released its evaluation of the UK's anti-money laundering and counter terrorist financing regime in December 2018, it gave the country almost full marks. Indeed, the FATF awarded the UK one of the highest compliance ratings of any financial centre, finding it substantially or highly effective in 8 out of 11 key goals. The UK was found as compliant or largely compliant in 38 out of FATF's 40 Recommendations. Apparently, the UK got 14 more full technical compliance ratings than the US and 17 more than Switzerland – both latter countries are the closest financial centres in size to that of the UK. It suffices to mention that civil society organisations both in the UK and abroad were dismayed.⁵⁹ Global Witness accused the review body of being 'asleep on the job'. RUSI questioned "the relevance" of the evaluation given the UK's repeated role in global money laundering schemes. In essence, there was widespread understanding among socio legal experts that the UK's high ratings appear to ignore reality.⁶⁰

2.9: Deficiencies Identified by the FCA and other national studies.

2.9.1: Deficiencies in Governance and Risk Management.

The senior management of banks and financial institutions are mandated by the FCA rules to take responsibility for the AML measures of their firms. The assumption is that management staff will have adequate knowledge of money laundering risks to which the firm is exposed and that they will ensure that steps are put into place to mitigate those risks effectively. The FCA itself has for long noted serious shortcomings in both governance and risk management. In a review conducted by the FCA in 2011 it was noted that "Although we identified some examples of good anti-money laundering (AML) risk management, we were concerned to find serious weaknesses common to many firms included in our review"⁶¹ Other areas of concerns as at 2018 include that; "there is little evidence that AML is taken seriously by senior management. It is seen as a legal or regulatory necessity rather than a matter of true concern for the business".⁶² Senior management indeed appear to attach greater importance to the risk that a customer might

⁵⁹ Sue Hawley, "Whitewashing the UK: The Financial Action Task Force's evaluation of the UK puts its credibility at stake", The official blog for the Centre for the Study of Corruption at the University of Sussex, January 14, 2019 available at <https://scscsussex.wordpress.com/2019/01/14/whitewashing-the-uk-the-financial-action-task-forces-evaluation-of-the-uk-puts-its-credibility-at-stake/> accessed 1 Jan 04 2020; Global Witness, "Dismay as G7 anti-corruption watchdog gives UK highest ever rating despite the country laundering hundreds of billions of pounds each year" Press release / Dec. 7, 2018; available at accessed 01/04/2020.

⁶⁰ Royal United Services Institute (RUSI), "RUSI Experts React to UK's Financial Action Task Force Mutual Evaluation Report" News, 7 December 2018 Centre for Financial Crime and Security Studies, AML/CTF, UK available at <https://rusi.org/rusi-news/rusi-experts-react-uk-financial-action-task-force-mutual-evaluation-report> accessed on 01/04/2020; See also FT, Value of City watchdog fines touches near-record lows for 2018, *Financial Times* available at <https://www.ft.com/content/cc42258e-fba2-11e8-ac00-57a2a826423e> accessed at 01 /04/2020.

⁶¹ Financial Services Authority, Banks' management of high money-laundering risk situations, June 2011 available at <https://www.fca.org.uk/publication/corporate/fsa-aml-final-report.pdf> accessed 17 03 2020.

⁶² Financial Conduct Authority, "Introduction" *FCA Handbook* available at <https://www.handbook.fca.org.uk/handbook/FCG/3/?view=chapter> accessed 17 03 2020.

be involved in a public scandal, than to the risk that the customer might be corrupt or otherwise engaged in financial crime. The board may in fact never consider the Money Laundering Reporting Officer (MLRO) reports. A UK branch or subsidiary may rely on group policies, which do not comply fully with UK AML legislation and other regulatory requirements.

Governance problems that may be highlighted in relation to accountancy, legal and property sectors include the inherent conflict in membership organisations like the Professional Body Anti-Money Laundering Supervision (OPBAS) that engage in self-monitoring of their own members. In these kind of situations it is better to have external supervision as recommended by a Parliamentary Committee.⁶³

2.9.2: Deficiencies in Customer due diligence (CDD) checks and in the role of the Money Laundering Reporting Officer (MLRO).

Poor adherence to due diligence standards is a problematic and identifiable aspect of the operations of UK banks and financial institutions. These failures include banks not applying appropriate procedures that are risk-based. As a result, some UK firms apply the same CDD measures to products and customers of varying risk. Some firms have no method for tracking the completeness or otherwise of customer checks. It is even known that some firms allow language difficulties or customer objections to get in the way of proper questioning to obtain necessary CDD information. Shortcomings include staff that conduct less CDD just because senior executives or influential people refer a customer.⁶⁴ In extremely bad cases, some firms have no procedures for dealing with situations requiring enhanced due diligence. Some firms fail to consider procedures to identify and verify customer's beneficial owners. Some of these shortcomings are clear breaches of the Money Laundering Regulations.⁶⁵ Staff may even have a habit of accepting customer's explanations for unusual transactions at face value. Some of these failings are discernible in the facts leading to the UK's Financial Conduct Authority (FCA) GBP72 million fine on Barclays Bank for failing to conduct proper due diligence checks on a group of ultra-high-net-worth clients who used the bank to move GBP1.88 billion of funds in 2011 –2012.

⁶³The Parliamentary Committee whilst supporting the role that OPBAS has been given in relation to the Professional Body Anti-Money Laundering Supervisors has persuasively recommended that there is a need for a single organisation to look at the system as a whole to identify weaknesses. See UK Parliament Government Response: Economic Crime (7 May 2019)op.cit.; 'Anti-Money Laundering Supervision by the Legal and Accountancy Professional Body Supervisors: Themes from the 2018 OPBAS anti-money laundering supervisory assessments', OPBAS, March 2019: <https://www.fca.org.uk/publication/opbas/themes-2018-opbas-anti-money-laundering-supervisory-assessments.pdf> access 08 Dec 2020.

⁶⁴ Financial Services Authority, (2011) op.cit., p. 53.

⁶⁵ The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692). See particularly regulations 5, 6, 27, 28, 31 33, 34 and 35. Financial Conduct Authority, "Introduction" FCA Handbook op.cit.

2.9.3: Deficiencies in the handling of higher risk situations, enhanced due diligence (EDD) and enhanced ongoing monitoring systems.

Given the size of the IFF and money laundering flows into UK banks, there is basis to recognise a general failure of firms and financial institutions to take adequate measures to understand the risk associated with business relationships and to conduct meaningful continuous monitoring. The most concerning cases, however, relate to deficiencies in the handling of higher risk situations. The scale of the problem can only be explained by recognising a failure of banks and FIs to establish the sources of funds and wealth for required monitoring and due diligence purposes. This is more so concerning PEPs from Africa and specifically Nigeria. The Nigerian *Malabu case* has shown that even where a PEP has been specifically identified and flagged, senior management and even government agencies with regulatory over-sight in England may still go ahead to give approval for huge transfers in favour of high risk customers in clear breaches of the Money Laundering Regulations.⁶⁶

This study has shown that despite the size of the money laundering problem in the UK not enough number of firms distinguish between customer's source of funds and their source of wealth.

2.10: The UK Extractive Industries Transparency Initiative.

The close involvement of the United Kingdom to the history and current practice of the extractive industries in Nigeria is a notorious fact. It is thus, necessary to signpost the Extractive Industries Transparency Initiative (EITI) as an important aspect of the legal and ethical architecture within which UK companies must operate internationally. The principles of EITI are included in the rules of engagement that UK oil majors and other extractive and mining business interests must apply in their operations in places like Nigeria. The EITI was developed to create a global standard for the promotion of open and accountable management of oil, gas and mineral resources. The EITI Standard requires the disclosure of information along the extractive industry value chain from the point of extraction, to exactly how revenues make their way through governmental channels, and how the funds eventually benefit the public. In this way, the EITI seeks to strengthen public and corporate governance culture, promote understanding of natural resource management, and provide the necessary data that will inform reforms for greater transparency and accountability in the extractive sector. EITI now operates in 53 implementing

⁶⁶ In its written defence, to a British court in 2018, JP Morgan asserted that Britain's Serious Organised Crime Agency (SOCA), now renamed the National Crime Agency, had approved transfer of \$800 million to Malabu Oil and Gas in 2011 in full knowledge that a former Nigerian oil minister convicted of money laundering would benefit when it. Julia Payne, Libby George, "JP Morgan says it knew ex-minister linked to firm in Nigeria oilfield deal" Business News April 6, 2018 available at <https://uk.reuters.com/article/uk-nigeria-oil-jpmorgan/jp-morgan-says-it-knew-ex-minister-linked-to-firm-in-nigeria-oilfield-deal-idUKKCN1HD1WG> accessed 17 03 2020.

countries, and is supported by a coalition of government, corporation and businesses as well as CSO's.⁶⁷

The EITI through its institutional and reporting structures provide key information that foster public debate and keeps information about legal and fiscal reforms in the open. Wherever EITI is in full application it would strengthen tax collection, track revenue distribution to communities help create financial models and monitor contracts. As a result of the foregoing among others, EITI in very unique ways aids the identification of corruption risks and makes it less easy for the corrupt to amass and hide corrupt wealth while working for oil and other mining companies.

2.11: Fast-tracking action and policy imperatives.

The depletion of Nigeria's wealth into the United Kingdom's coffers through a series of carefully maintained strategies, connections, actions and omissions to act, is *prima facie* a neo colonialist strategy. The original sin was colonialism against the peoples of Nigeria and other parts of the developing world followed by phenomenal resource extraction. The neocolonialist strategy is the exploitation of extraction through a web of offshore jurisdictions that account to the UK by sharing profit extracted through IFF. The development of large networks used to promote and exploit financial interests to the advantage of the UK is highly successful and is one of the reasons the UK is very wealthy country today whereas Nigeria is poor and its people live in penury.

Nigeria needs to institute an annual money laundering and terrorist financing National Risk Assessment (NRA). In conducting this assessment, the aim should be to identify, understand and assess the money laundering and terrorist financing risks faced by Nigeria in relation to high risk receiving states such as the UK and the UAE. In the course of events, the nature of these risks and the countries they affect would change.

⁶⁷ EITI, "The EITI Standard 2019 The global standard for the good governance of oil, gas and mineral resources" 15 October 2019 pp. 9-15 available at https://eiti.org/files/documents/eiti_standard_2019_en_a4_web.pdf accessed on 29 August 2020.

SECTION 3.

3. COMBATING IFF: IMPERATIVE CONSIDERATIONS AND ALTERNATIVE FUTURES.

This section takes a holistic view of the doctrinal and socio-legal analysis engaged in over the preceding chapters. In consonance with the wide conceptualization of IFF adopted in this study, arguments and recommendations are made over a wide range of areas particularly in prevention of money laundering, redressing unequal contracts, asset recovery, recovery of tax proceeds as well as recovering possession and control of natural resources.

In essence, this section is not only analytical but represents our prescriptive recommendations. The section builds upon the finding that both the UAE and the UK are international financial centres with global economic and political significance that maintain a strong financial connection to the economy and development of Nigeria. The section reiterates the deleterious effects of observable patterns of illicit investment of Nigerian elite groups in financial institutions in both countries such as the acquisition of real property, and other corporate investments. The section shows that there are acute difficulties surrounding investigations and asset recovery between the countries involving billions of dollars of stolen wealth that is transferred to both the UAE and the UK where asset recovery is nearly practically impossible. Despite many pertinent anticorruption and transparency treaties, conventions, standards and other soft laws, the problem of IFF will not abate without further cooperation and implementation of drastic measures. The section tackles prevention and elimination of IFF practises through a series of strategies. Nigeria's economic future and the country's ability to attain the Sustainable Development Goals (SDGs). Significant levels of poverty and economic deprivation would increase and Nigeria would struggle to achieve the Sustainable Development Goals if the current levels of IFF practises between the countries continue or increases.

3.0: IFF a 50 billion dollar sink hole: Tracking, stopping and getting it.

The major contributors to IFF from Nigeria include: (a) proceeds from commercial tax evasions, (b) proceeds from various illicit activities engaged in by corporations and business ventures, (c) proceeds derived from criminal activities, and (d) the generation and receipt of bribery and corruption especially grand corruption. We do not accept the premise that the 'umbrella' definition of IFFs should be anchored in law, rather than ethics, so as to give precise and objective contours to what constitutes 'illicit flows'. Rooting the definition of IFF in "ethics" however raises the question - whose ethics? When flows are cross boundary, which "ethical" system prevails? Capitalism has its own "ethical" system and they are different. This study takes

the *prima facie* position that ‘ethical’ connotes an objective identification of what is “right” and what is “wrong”. Hence Nick Hildyard correctly argues against: “lawful, routine, accepted practices that decay, debase or otherwise deteriorate the political processes through which society as a whole might reach a view as to what constitutes “the good society”.⁶⁸ Since this book is written for the benefit of Nigeria and Africa by extension this then raises the question what sort of society do we want for a developing state? At the very least, we would suggest that “ethical” from the positions of a developing state like Nigeria would include support for the: the collective good over private gain?

The better definition of IFFs is therefore, one that see it as *cross-border transfers of money or assets connected with some unlawful and/or unethical activity*.

The IFF curtailment agenda deserves special treatment in the context of Nigeria and its relations with the UAE and UK.⁶⁹

Nigeria’s political commitment to taming the IFF scourge in the context of contemporary international relations and using linkage politics is demonstrated in its leadership role (as a co-sponsor, within the Group of 77) in ensuring the passage of a UN General Assembly (UNGA) Resolution on Promotion of International Cooperation to Combat Illicit Financial Flows in Order to Foster Sustainable Developments.⁷⁰

3.1: Review and Assessment of the Performance of National and Institutional Stakeholders.

Nigeria has taken some notable and progressive steps in addressing the IFF problem worthy of mention.⁷¹ These include entering into a fair number of Mutual Legal Assistance in Criminal Matters treaties with the UK, the UAE and many other countries (See table 13).⁷² The proposed

⁶⁸ Nicholas Hildyard, *Corrupt but legal: Institutionalised corruption and development finance* (Counter Balance secretariat, 2016) available at <http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/Corrupt-but-Legal.pdf> 11 Jan 2021.

⁶⁹ This study therefore borrows from the methodology and broad pragmatic approach of **Irene Musselli and Elisabeth Bürgi Bonanomi**’s study (in Musselli and Bonanomi’s op.cit., et seq.) as well as an adaptive approach of the Report of the High Level Panel on Illicit Financial Flows from Africa.

⁷⁰ Resolution A/RES/72/207 of 21 October 2019.

⁷¹ UNGA, Battle against Corruption Vital to 2030 Agenda, General Assembly President Tells High-level Commemoration of Anti-Corruption Treaty’s Adoption: Secretary-General Highlights Convention’s Near-Global Acceptance, Hails Money-Laundering Efforts of Nigeria, Tunisia. General Assembly Seventy-second Session, High-level Debate, AM & PM Meetings GA/12017 23 May 2018 available at <https://www.un.org/press/en/2018/ga12017.doc.htm> accessed on 20 Jun 2020.

⁷² The Treaty between the Government of the United States of America and the Federal Republic of Nigeria on Mutual Legal Assistance in Criminal Matters, signed at Washington on September 13, 1989. Ex. Rept. 106-24.

law, on Mutual Legal Assistance in Criminal Matters between Nigeria and Other Foreign Countries, (Senate Bill 224, 2017) will be of much utility to anticorruption campaigners and regulatory bodies. These laws will all help to facilitate the identification, tracing, freezing, restraining, recovery, forfeiture and confiscation of proceeds, property and other instrumentalities of crime. The adoption of the first National Anti-corruption Strategy (NACS) by the Federal Executive Council on July 5, 2017 is again of significance and importance to curtailing IFF.⁷³ Whilst the NACS is not completely perfect, the effort of drawing one up at this stage of Nigeria's development undoubtedly provides better insight as well as opportunities for a coordination and guidance for all sectors and stakeholders in the fight against corruption.⁷⁴

3.2: Critique of the Performance of the Central Banks.

The Central banks of the countries surveyed in this study all share a part in the blame for the failure of their systems in preventing systemic IFF. For example, with the host of irregularities that must have accompanied the acquisition of over 800 properties in Dubai mostly by Nigerian PEPs as revealed in the Sandcastles' data as well as the significant London properties we detailed (both in tables 6 and 7), it can only be concluded that the CBN is not performing its supervisory tasks to the sufficient standard. Its failure of regulatory oversight relating to transactions involving PEPs is legendary in proportions. The CBN played a direct role in allowing the pilfering of over 5 Billion Naira by the Abacha military regime.⁷⁵ The CBN would therefore, need to take a more effective approach with targeted measures not only to negotiate instruments but also to engage in better monitoring of financial transactions of PEPs and other businesspersons. Looking at what we have discovered so far, the CBN has not satisfactorily established and performed its supervisory functions not only over banks particularly in the case of certain types of customers (e.g., non-resident or offshore customers, PEPs but there are also shortcomings in oversight in relation to Private Investment Companies (PIC), MNCs and shell companies; offshore entities; cash-intensive businesses and import or export companies). The CBN must do better particularly in its role as an assessor of the adequacy of financial institution's systems to manage the risks associated with senior local/foreign political figures, but

⁷³ Fatima Waziri – Azi, An Evaluation Of The Nigerian National Anti-Corruption Strategy Vol. 5 *European Journal of Research in Social Sciences* No. 5, 2017 pp 1,2 and 9; available at <https://www.idpublications.org/wp-content/uploads/2017/09/Full-Paper-AN-EVALUATION-OF-THE-NIGERIAN-NATIONAL-ANTI-CORRUPTION-STRATEGY.pdf> accessed 20 June 2020. Other recent and notable initiatives include the Open Contracting Data Standard (OCDS); Open Government Partnership (OGP); Extractive Industries Transparency Initiative (EITI); Beneficial Ownership; Justice Sector Reform; Public Service Reforms; Tax Reform; Illicit Financial Flows (TSA, cash less policy, Anti- money; laundering/counter terrorism financing etc.); Anti-Corruption and Transparency Unit (ACTU); Convention on Business Integrity Initiative; Ease of doing business executive orders; Petroleum Industry Reforms; Budget Transparency Initiatives and the recent CGRS ratings.

⁷⁴ Waziri – Azi, *ibid* p. 9.

⁷⁵ See Abbah *opc.it*. p. 52.

it must do better in instilling an expectation of probity among corporate management and their ability to implement effective risk-based due diligence, monitoring and reporting systems. If this were in place, KBR and Haliburton cases would not have occurred in the way they happened leading to the high fines that accrued only to the USA via the FCPA actions.

It is imperative that the CBN and the Ministry of Justice must ensure the prosecution of financial institutions that violate anti -corruption laws. The imposition of sanctions against banks including prosecution of their employees together with the institution is an essential part of creating a better-disciplined national financial system that is less susceptible to mischief from within and without.

The journey to a full grant of autonomy to the NFIU is not yet complete although credit is due to the country's authority for the implementation of the Nigeria Financial Intelligence Unit Act 2018, which established the NFIU as an independent entity.⁷⁶

3.3: Review and Assessment of International Commitments.

The existence of many sophisticated international agreements, Memorandum of Understandings (MOUs), various forms of soft law are crucial for the financial health of Nigeria especially in addressing IFF. These international commitments complement the many relevant national laws we have highlighted including the more recent specialist legislation such as the Nigeria Financial Intelligence Agency Establishment Act (NFIA) and the Proceeds of Crime Bill.⁷⁷ It will be important for scholars to continue interrogating how the domestic and the international legal regimes complement each other. It is in this light that we must consider the broad outlines of international agreement and consider whether put together they can help achieve the noble aim of African nations to substantially tackle illicit financial flows by 2030, and eliminate safe havens that create incentives for foreign transfer of stolen assets.⁷⁸ The general regime of international cooperation against IFF that applies to and between Nigeria, the UAE and UK are identified in the table below. It shows that much progress has been made in anti-corruption law. The table also shows that there is a plethora of international legal instruments that establish the obligation of the three countries to address IFF challenge. The three countries thus, have areas of strengths

Previously the NFIU was established through Section 1(2) (c) of the Economic and Financial Crimes Commission (EFCC) Act.

⁷⁷ NASS, Bill Tracker: Proceeds of Crime Management Agency (Establishment) Bill, 2019 available at <https://www.nassnig.org/documents/bill/10450> accessed 20 June 2020.

⁷⁸ The Addis Ababa Action Agenda on financing for development calls for redoubling efforts to substantially reduce IFFs by 2030. It invites the "appropriate international institutions and regional organizations to publish estimates of the volume and composition of illicit financial flows." See UNCTAD, "Defining, estimating and disseminating statistics on illicit financial flows in Africa" available to <https://unctad.org/en/Pages/Statistics/UNDA-Project-1819Y.aspx> accessed on 20 June 2020.

upon which further strategic international cooperation can be built. Some of these treaties are bilateral and others bind the three together as parties in a larger multilateral arrangement.

Apart from anticorruption treaties, it is perhaps important to highlight the remarkable web of existing treaty obligations with respect to criminal justice between and among the three states. The importance of the existence of these sort of treaties cannot be overstated. They are predominantly recent and signify very good relations between the countries. Put together they indicate the potentials for much more spectacular levels of cooperation on criminal justice matters than we are witnessing. The punishment for convicts of corruption offences should be routine.

The fact that there are existing MLAs, as well as extradition and prisoner transfer treaties between Nigeria and the UK and UAE *inter se* place the countries in a good place to collaborate meaningfully in dealing with high profile anticorruption cases. There have been a few outstanding successes and prominent cases in practice upon which further good legal reform and future practice may be based (e.g. Dan Etete).⁷⁹ Extradition remains a highly useful mechanism for governments and Nigeria must do its best not only to retain the treaties it has presently but most work to develop even more.

3.4: Strategies for Combatting Trade based Money Laundering.

Grievous damage has been occasioned on the Nigerian state and its economy by multinationals through trade-based money laundering (TBML) and other IFF. At the nadir of this practice has been international oil companies that have made themselves adept at perverting the course of Nigeria's national life. It is particularly incumbent on the United Kingdom to press for changes in its multinationals operating in Nigeria to make positive change and end the era of economic and political mischief in their investment practice with the country. For instance, it has for long been known that the effective lobbying by oil companies is a large aspect of the stalled progress of the Petroleum Industry Bill (PIB) for nearly 20 years now because "the oil majors have been particularly vocal on potentially losing tax exemptions as a result of this law". Shell for instance claims that "the proposed PIB Joint Venture terms are not competitive when compared with other oil producing countries."⁸⁰

Radical changes will at any rate, be necessary. Particularly because of the importance of oil to its economy, Nigeria must complete the process of the implementation of the Petroleum Industry Bill. Fortunately, Nigeria, along with states like Senegal, Tunisia and Angola have begun to address their IFF through transfer pricing by establishing separate transfer pricing units within their revenue collection agencies to enable auditing and the investigation of taxes paid by

⁷⁹ See footnote 95, 455 and our discussion in 5.2: The Malabu Case – OPL 245 Oil Deal.

⁸⁰ Evans, Galkina, Marriot et.al. p. 16; Nigeria's PIB not competitive – Shell on: November 19, 2012 "Nigeria's PIB not competitive – Shell", Sweet Crude Reports, 19, November 2012 <http://sweetcrudereports.com/2012/11/19/nigerias-pib-not-competitive-shell/>

multinationals. This development is key towards reduction of leakages in this manner. Other identifiable areas of necessary change that countries like Nigeria should pay more attention to include issues such as permanent establishment, capital gains, fees for technical services, transfer pricing and the absence of anti-abuse clauses when signing Double Taxation Agreement (DTA) giving their dependence on source-based taxation.⁸¹

Nigeria needs to pay more attention to organisations like African Tax Administration Forum (ATAF).⁸² Through its active technical assistance programme this body helped African countries recoup about US\$ 160 million of tax revenues just in between 2015-2018. Changes to legislation will be key.⁸³

Nigeria should consider adopting new South Africa style like tax regulations, allowing for transfer pricing reporting ‘country-by-country’ in order to help the government understand how large multinational companies shift profits between their subsidiaries to avoid taxes.⁸⁴ The requirement of Country-by-Country reporting (CbCr), would affect consolidated Multinational groups with a substantial turnover threshold to make such submissions.

3.5: Multinationals Enterprises and the Law: Imperative Considerations.

Although at least 33 percent of world trade takes place within the context of multinational enterprises, the law and regulation of their activities is in dire need of change in the promotion of transparency.⁸⁵ Tax fraud on nations is one of the larger percentages of International IFF leakage. The reason for that is quite plainly the recklessness in accounting rules of corporations.⁸⁶ Even with the onset of EITI and its Nigerian equivalent – NEITI, it is altogether too easy for MNEs to manoeuvre the true picture of their company accounts particularly their corporate annual reports. A corporation may publish an Africa wide profit accounts without showing separate national accounts. Thus, we can have the incredulous position where the citizens “in a country where a multinational operates cannot tell from these reports even *whether* that corporations operates there, let alone where it does, its level of activity, its profits, its local employment , or its tax

⁸¹Miyandazi and Martin Roncerayop.cit., p. 23

⁸² Established in 2008. This organisation represents an African viewpoint on tax matters at the UN Committee of Experts on International Cooperation in Tax Matters and at the OECD Ibid p. 30.

⁸³ Tax Analysts. 2018. African Countries Nowhere Near Meeting BEPS Minimum Standards. <https://www.taxnotes.com/worldwide-tax-daily/base-erosion-and-profit-shifting-beps/african-countriesnowhere-near-meeting-beps-minimum-standards/2018/02/16/26wrld?highlight=ATAF>.

⁸⁴ See for instance PKF South Africa. 2018. Country-by-country reporting and transfer pricing. 23 November 2017. <http://www.pkf.co.za/news/2017/country-by-country-reporting-and-transfer-pricing/>

Tax Analysts. 2018. African Countries Nowhere Near Meeting BEPS Minimum Standards. <https://www.taxnotes.com/worldwide-tax-daily/base-erosion-and-profit-shifting-beps/african-countriesnowhere-near-meeting-beps-minimum-standards/2018/02/16/26wrld?highlight=ATAF>.

⁸⁵ Nick Shaxson, “Over a third of world trade happens inside multinational corporations” Tax Justice Network website available at <https://www.taxjustice.net/2019/04/09/over-a-third-or-more-of-world-trade-happens-inside-multinational-corporations/> April 9, 2019.

⁸⁶Shaxson (2012) opcit., p. 221.

payments”⁸⁷ Country-by-country accounting requirements is therefore a *sine qua non* of arresting IFF’s through MNC operations and this is very much an imperative for the entire African region.

3.5.1: Oil Companies

Averting IFF in Nigeria’s extractive industries whether between the three countries under review or generally would require special attention to the oil sector. Bribery, corruption, illegal resource exploitation, and tax evasion are the main channels of IFFs especially in relation to Nigeria- UK relationship in the country’s extractive industries. Much more damage is done to Nigeria’s financial interest by other countries as well.⁸⁸ Indeed Nigeria’s oil and gas sector contributes 92.9 per cent of the total amount of IFFs the country records yearly through companies and persons operating in the highly porous yet important sector.⁸⁹ In stolen crude oil deals alone Nigeria suffered more than \$12 billion in losses to the US between 2011 and 2014. Another \$3 billion was lost to China and \$839.5 million to Norway in the same period. The damage done from within by bureaucratic mischief is very significant as well. Unfortunately, there is also under-reporting of production volumes and oil lifting by the NNPC and Department of Petroleum Resources (DPR).⁹⁰

3.6: Streamlining and improving identification details of Beneficial Owners.

One of the key challenges at the global level in addressing IFF relates to the difficulties in establishing and linking beneficial ownership. This is particularly because of poor access to country-by-country reporting data on beneficial ownership. There is much to celebrate in the UKs recent adoption of beneficial ownership laws allowing much transparency over properties and corporate structures. As noted in Chapter 5 it is unfortunate that the UK has not introduced its new progressive beneficial ownership transparency regime to its overseas territories. There is therefore a need for increased transparency in the ownership of companies within the constellation of British tax jurisdictions around the world. With wider adoption of the beneficial ownership disclosure regimes, valuable information would be freely shared enabling law enforcement to do their job. Beneficial ownership increases contract transparency and very importantly improves upon international cooperation over the issue of IFF. The new rules will certainly help – but they are also easily circumvented and it must be expected that there will be attempts to do so. For example, Ibori’s companies were all in the name of cronies and it is highly unlikely that they would ever have declared that they were holding assets on Ibori’s behalf.

⁸⁷ p. 222

⁸⁸ NEITI, “Averting Illicit Financial Flows in Nigeria’s Extractive Industry” *Occasional Paper Series 4* (March 1, 2019); Bassey Udo, “NEITI identifies enablers of illicit financial flows in Nigeria’s extractive industries” *Premium Times* March 7, 2019 available at <https://www.premiumtimesng.com/news/top-news/318163-neiti-identifies-enablers-of-illicit-financial-flows-in-nigerias-extractive-industries.html> accessed on 10 July 2020.

⁸⁹ Chineme Okafor, NEITI: Oil Sector Accounts for 92.9% of Illicit Financial Flows in Nigeria Annually *This Day* February 27, 2019 available at [neiti-oil-sector-accounts-for-92-9-of-illicit-financial-flows-in-nigeria-annually/](https://www.thisday.com.ng/news/2019/02/27/neiti-oil-sector-accounts-for-92-9-of-illicit-financial-flows-in-nigeria-annually/) accessed on 10 July 2020.

⁹⁰

3.7: Expansion of Electronic Verification Systems.

Other commendable capabilities of Nigeria currently include Know Your Customer (KYC) policies, the cashless policy and the advanced biometric banking system -Bank Verification Number (BVN).⁹¹ To begin with the BVN technology allows for the possibility of development of a common KYC system for financial institutions. Although there are some critical views the introduction of the BVN in 2017 has at least, anecdotally been seen as a success.⁹² Some experts have persuasively recommended that the BVN system should be extended to the Federal Inland Revenue Service (FIRS) and even insurance companies.⁹³ Indeed, modern electronic resources are an imperative in dealing with IFF in the 21st Century.

3.8: Streamlining and improving methods for moving money around.

The way and manner in which the wealthy and resourceful from Nigeria have been able to move stupendous amounts of monies around the world has relied on a certain level of permissiveness by the recipient countries. The apparent laxities defy not only the normal rules of international finance but also those of national banking laws in all states concerned.

Thus, changes must be recommended towards more conservative banking practices. The UAE and UK particularly must bring themselves in line with their own national banking, real estate and corporate laws from which they often allow companies and highly privileged individuals to depart. Given the systematic abuses that are manifest in the experience of Nigeria the UAE and UK as development partners must adopt much stricter controls in relation to moving capital around.

3.9: Desirable changes to the General Regime of International Anticorruption Law

3.9.1: Tax Islands, Secrecy Jurisdictions.

This study has so far revealed some of the direct and indirect secrecy policies in the financial systems of both the UAE and the UK that contribute to Nigeria's IFF problem. Although both the UAE and UK make a lot of effort to posture themselves as open and transparent financial systems, the truth is that both countries are well within the top quintile of the banking secrecy jurisdiction league table. The UAE is now ranked tenth in the 2020 Financial Secrecy Index;

⁹¹ Bank Verification Number (BVN) scheme involves identifying an individual based on physiological or behavioural attributes, such as fingerprint, signature and others. The CBN, in furtherance of its mandate to develop, enhance and establish the security of the electronic payments systems in Nigeria released the "Regulatory Framework for Bank Verification Number (BVN) Operations and Watch-List for the Nigerian Banking Industry". See directive to all deposit money banks, Switches, mobile money operators, payment terminal service providers, payment solution service providers, Nigerian Financial System BPS/DIR/GEN/CIR/04/010. Available at <https://www.cbn.gov.ng/Out/2017/BPSD/Circular%20on%20the%20Regulatory%20Framework%20for%20BVN%20%20Watchlist%20for%20Nigerian%20Financial%20System.pdf> accessed 14 July 2020.

⁹² Esoimeme, Ehi, "A Critical Analysis of the Bank Verification Number Project introduced by the Central Bank of Nigeria" *SSRN Electronic Journal*, 2015.

⁹³ See suggestions of Andrew Nevin at the Session Three: Holding IFF Facilitators And Intermediaries Accountable in the Presidency (Presidential Advisory Committee Against Corruption), p. 41.

while the UK's current position is 12th on the 2020 Financial Secrecy Index. It is important to consider how the UK's position is further enhanced through its position at the core of a global web of closely associated secrecy jurisdictions. They include: Cayman (number 1), British Virgin Islands (number 9), Guernsey (number 11) and Jersey (number 16) feature in the top twenty. This suggests that the UK could be an even bigger problem to Nigeria as an IFF enabling nation that the UAE⁹⁴ The banking systems of both states therefore provide an interconnected criminogenic environment for states like Nigeria in the global system. The environment thus, created has been systematically exploited for decades by various IFF actors across the globe.

3.9.2: Introduction of an International Beneficial Ownership Register to end the Shell Game.

If we are going to solve corruption, everyone must know who they are doing business with and which corporations are doing business in their country. There has to be an end to the current complex and poorly regulated system in many countries, which allows anonymity in the creation and ownership of corporations.⁹⁵

The trust exemption currently attached to the UK beneficial ownership regime is inimical to transparency and should therefore, be removed.

It is necessary to internationalise and expand the beneficial ownership regime by creating a global register of owners and beneficiaries of corporations. Such a registry will best have unique identifiers for each company, its formation information and all data about its directing and operating hands. This would further address the challenge posed by IFF in international commercial transactions and international trade. It will drastically reduce money laundering internationally and would assist investigations and regulatory bodies in tracking illegally owned assets. Knowing the owners and beneficiaries of corporate investments and vehicles would lower the cost of compliance and due diligence for all kinds of commercial ventures and companies and it will boost tax compliance and the tax receipts accruable particularly to countries in the developing world.⁹⁶

3.9.3: Holding IFF Enablers, Facilitators and Intermediaries Accountable.

This study has established that the corruption and IFF afflicting Nigeria has many facilitators. It is indeed the case that only few of those complicit in the long chain of organized criminality of IFF get the deserved attention. The state of play in international banking and finance such as was exposed in the Malabu scandal discussed earlier shows that the network of enablers over a single

⁹⁴ Tax Justice Network, Financial Secrecy 2020 Index Narrative Report on the United Kingdom <https://fsi.taxjustice.net/PDF/UnitedKingdom.pdf> accessed 21 July 2020.

⁹⁵ Tom Townsend and Jose Marin, "Stop the Shell Game", *The Observer: News and Views from Organisations in the Civil Society Coalition Observing the UNCAC COSP8* Issue 2, 18 December 2019. P. 1. This study thus notes with satisfaction the recent implementation of a group to ensure that all Business ownership data is released openly see <https://www.openownership.org>.

⁹⁶ Ibid.

transaction may reside in several countries at a time. The professionals involved in some complex transactions may act appropriately by flagging off concerns whereas others would not be diligent or may inadvertently assist IFF. These intermediaries and handmaidens of IFF exist in all three countries reviewed. The discussions surrounding the movement of the Abacha millions out of Nigeria is a veritable tale of the complicity between Nigerian bankers and their foreign corresponding and counterpart partners, not to mention an endless stream of lawyers, accountants etc. Enablers and facilitators exist in many professions but are found to have been prominent in the banking, property and legal professions. Other enablers may include brokers, trust experts, commercial actors, financial institutions, auditors and accountants.⁹⁷

Nigerian investigators of IFF must therefore, be to be holistic in their identification of suspects and in drawing up an effective dragnet over offenders.

3.9.4: Expert monitoring of politically exposed persons (PEPs) and their luxury property investments.

Although PEP corruption does less damage in economic terms than trade based IFF, it perhaps does more damage to societal morals. In many cases also, trade based illicit financial activities like tax evasion and implementation of unequal contracts would require PEP complicity.⁹⁸ For this reason, grand corruption is perhaps the worst form of corruption a country can have. This study finds that PEP corruption is found in Nigeria, the UAE and the UK. PEPs in all three countries assist in the facilitation of IFF from Nigeria. Inevitably, Nigeria must therefore, take the task of addressing this challenge as an existential crisis. To begin with when PEP's are arrested, investigated or prosecuted, it is important that their intermediaries, handlers and enablers should face similar treatment.⁹⁹

A comprehensive list of Nigerian PEPs should be generated annually. This data should be shared with its development partners, particularly the UAE, and the UK. The task of tracing the foreign investment practices of Nigerian PEPs in this way will have to take on a historical perspective.

⁹⁷ For a long list of enablers in other criminal enterprises involved in IFF see Todorov, Shentov and Stoianovop.cit., p. 9.

⁹⁸ The cyclical causation of corruption between business and grand corruption of PEPs is well described in Ackerman's article. He wrote: "Firms also pay to affect the terms of contracts and of the future regulatory environment. Even when a firm's managers believe that it has a strong chance of winning an honest competition, they may bribe if that is the accepted method of doing business in spite of laws to the contrary. The risks of both legal sanctions and reputational damage are judged low enough to justify payoffs." Susan Rose-Ackerman, "Grand corruption and the ethics of global business", vol. 26 *Journal of Banking & Finance* (2002) 1891; see also Susan Rose-Ackerman, "Democracy and 'grand' corruption", *International Social Science Journal* 48(149):365 – 380.

⁹⁹ The Presidency Presidential Advisory Committee Against Corruption, The Federal Ministry Of Justice & Ministry Of Foreign Affairs Conference On Promoting International Co-Operation In Combating Illicit Financial Flows And Enhancing Asset Recovery To Foster Sustainable Development 5 – 7 June 2017 State house banquet Hall, Abuja – Nigeria.

For instance, a former military governor of Ogun State (between 1987–1990)—is identifiable as owning up to six properties with a total purchase price of over \$2 million.¹⁰⁰

3.10: The problem of PEP Investor visas and migration.

Investor visas are an increasing fact of international life and a favourite migration tool of the elite classes of many African and other developing states. African investors in foreign lands should in fact be encouraged to ensure that Africans are not excluded from the normal occurrences and advantages of international commercial life, however, investors from Africa should be monitored to ensure that they are not mostly PEPs who are seeking to legitimise an escape route for their stolen wealth. Accordingly, an appropriately enhanced monitoring regime is needed for countries like the UAE and UK investor or allied visa application schemes. The United Kingdom (UK) has already been identified among others like Spain, Hungary, Latvia, Portugal as the top 6 EU jurisdictions that have granted the highest numbers of golden visas – above 10,000 each – to investors and their families.¹⁰¹

The UAE equivalent under the ‘Long-term Residence Visas in the UAE’ route remains exceptionally worrisome from a due diligence point of view. We will discuss below how immigration is already part of the enticement for dodgy property investments. In 2019, the UAE implemented a new expansive system for long-term residence visas, which enables foreigners to live, work and study in the UAE without the need of a national sponsor and with 100 per cent ownership of their business on the UAE’s mainland. Such visas are issued for 5 or 10 year periods after which they are automatically renewed.¹⁰²

Like the legal framework in the UK at least till 2018, the UAE’s equivalent of the golden visa has little or no convincing procedures that ensure that the Immigration and Borders Service conduct due diligence on applicants or effectively evaluate whether and to what extent applicants are politically exposed persons (PEPs).¹⁰³

¹⁰⁰ At least one of those properties, a villa, was alleged to have been bought in January 2003, while this Governor was still in office. See Page opcit., p. 14

¹⁰¹ Laure Brillaud and Maïra Martini, Transparency International and Global Witness, *European Getaway Inside The Murky World Of Golden Visas* (London: 2018) p. 3 Available at http://transparency.eu/wp-content/uploads/2018/10/REPORT-European-Getaway-Inside-the-Murky-World-of-Golden-Visas_web.pdf accessed on 17 May 2020.

¹⁰² The United Arab Emirates’ Government portal, Long-term residence visas in the UAE available at <https://u.ae/en/information-and-services/visa-and-emirates-id/residence-visa/long-term-residence-visas-in-the-uae> accessed on 17 05 2020.

¹⁰³ Transparency International UK, “Gold rush: Investment visas and corrupt capital flows into the UK”, October 2015. Retrieved from: transparency.org.uk/publications/goldrush-investment-visas-and-corrupt-capitalflows-into-the-uk; Transparency International UK, 2015 and David Pegg, “The ‘golden visa’ deal: ‘We have in effect been selling off British citizenship to the rich’”, *The Guardian* (web), 4 July 2017. Retrieved from: theguardian.com/uk-news/2017/jul/04/golden-visa-immigrationdeal-british-citizenship-home-office. Cf. SEF, Manual De Autorização de Residência para atividade de Investimento (ARI), 1 September 2017. Retrieved from: sef.pt/pt/Documents/Manual_ARI_2017.pdf.

3. 11: Nigeria Specific Solutions: Role of Civil Society and other Pressure Groups.

There is an obvious and continuous role of guardianship of ethics for NGOs and CSOs, government officials, media, and academics in Nigeria, the UAE and the UK. These sectors have to push for the greatest changes at the national level in their respective countries. Fortunately, in Nigeria, there is a long-standing tradition of activism and lobbying for the development of anticorruption policies and legislation.¹⁰⁴ The role of corruption, tax evasion and money laundering and other IFF in fueling the poverty, terrorism, underdevelopment and the spread of all kinds of misery in many countries is enough justification for the interest of NGOs/CSOs in addressing these issues.¹⁰⁵ IFF affect economic justice and lowers the observance of human rights standards and practice. They stifle domestic resource mobilisation, undermine government accountability and stability, and fuel economic inequality.¹⁰⁶ Thus, for instance, our recommendations remains that most national existing professional ethics codes for the legal, accountancy and real estate sectors should ideally also make provisions specifically for ‘international ethical considerations’. The job of advocacy through recommendation and spearheading of such campaigns is well suited for NGOs/CSOs.

Nigerian NGOs/CSOs like HEDA have correctly been pushing a progressive agenda against cross-border corruption and IFF. There is also a push to widen the mandate and competence of the International Criminal Court (ICC) to cover cross border financial crimes and perhaps to recognise grand corruption as one of the ‘crimes against humanity’ under the Rome statute. There is in fact evidence to suggest that, in certain cases, corruption may take the form of a crime against humanity.¹⁰⁷ This view has fortunately caught the attention of the Nigerian government and Nigeria’s Attorney General and Minister of Justice demanded at the ICC’s Assembly of State Party Congress in November 2017 for the inclusion of grand corruption as a ‘crime against humanity’.¹⁰⁸ In the area of business and corporate corruption there is good leadership displayed by CSOs like the Convention on Business Integrity (CBI) that aim to influence the behaviour of systems and institutions through the wide publication of ratings and rankings performed on

¹⁰⁴ An account of the domestication process for necessary treaties in Nigeria goes: “Intense advocacy by stakeholders is needed at this stage to bring the particular convention to the front burner. Treaties signed by the country have been known to remain inactivated for up to ten years.” Transparency International (TI), “Anticorruption Conventions In Africa: What Civil Society Can Do To Make Them Work” available at https://agora-parl.org/sites/default/files/ti-undp-iss_-_anti-corruption_conventions_in_africa_-_en_-_pace.pdf accessed 19 June 2020.

¹⁰⁵ Badré *ibid*.

¹⁰⁶¹⁰⁶ Raymond W. Baker, “Curtailing Illicit Financial Flows a Human Rights Imperative”, Thomson Reuters Foundation 30 April 2013 available at <http://news.trust.org//item/20130430114538-5y8aj/> accessed 06/04/2020.

¹⁰⁷ Ilias Bantekas, “Corruption as an International Crime and Crime against Humanity: An Outline of Supplementary Criminal Justice Policies”, *Journal of International Criminal Justice*, Volume 4, Issue 3, July 2006, p. 466.

¹⁰⁸ Comrae Issa Aremu, Some Notes On Common Questions In The Fight Against Corruption Paper delivered at a Training Workshop On Anti-Corruption Monitoring And Reporting Organised by Human & Environmental Development Agenda (HEDA) Wednesday March 21, 2018 Rock View Hotel Royale, Abuja p.1.

them.¹⁰⁹ Initiatives like this will enable more transparent, consistent and predictable transactions that populace will benefit from. As a result, IFF repelling behaviour is encouraged through the methodology and integrity of devices like the Corporate Governance Rating System (CGRS) for listed companies in Nigeria established by the CBI in partnership with The Nigerian Stock Exchange (NSE).¹¹⁰

Currently the desirable levels of joint up thinking and cooperative approach between and among the NGOs/CSOs in Nigeria and the UK on IFF issues is in its infancy. As a result of various misunderstandings and under appreciation of the scale of the IFF problem, NGOs and CSOs in all countries through their inaction are somewhat responsible in their own way for the continuance of the unwholesome situation.

3.11.1: Diaspora communities as arrowheads of resistance to IFF in host states.

There is a special place for Nigerians in the diaspora or ‘Naijasporans’ in addressing IFF. Nationals of developing states in the diaspora could help victim countries map the scope of looted funds by coming up with information on: where assets are located; which assets are worth following; recovery mechanisms; and the best professionals to use. This particular recommendation has become the arrowhead of a series of recently concluded high profile conferences on the topic of tracing stolen funds and asset recovery in Nigeria, the UAE and the UK. Indeed the first attempts at organising a network of volunteer investigators and researchers from the ranks of attendees of a troika of conferences under the tracing Noxious Funds academic movement has emerged. Research groups involving Africans in the Diaspora and their counterparts in the UK have kicked off. Participants aim at engaging in further specialist anticorruption activities including monthly online joint tracking illicit assets and investment training sessions.¹¹¹

¹⁰⁹CBI was launched in 1997 to empower business transactions in and within Nigeria against corruption and corrupt practices. The vision is to alter the idea that Nigerian businesses are fraudulent and to foster the sort of international relationships that will produce meaningful exchanges. CBI established The Code of Business Integrity which spells out minimum standards for business integrity in Nigeria. Information and materials about the CBI Initiative are available at <https://www.connectingbusiness.org/> See above Chapter 6.1: and footnotes 715 and 719.

¹¹⁰ PGS, Advisors International, “Corporate Governance Rating System” CGRS Website available at <https://www.cbinigeria.com/wp-content/uploads/2020/06/methodology.pdf> accessed 10 July 2020.

¹¹¹ See the communique of the following conferences: Strategies and Techniques for whistle-blowing & Tracing Property Purchased and investments from Proceeds of Bribery and Corruption transferred to the west and tax havens organised by university of Kent and the MacArthur foundation with the corner house; global witness and human and environmental development agenda at shore gate hotel Lagos on 20th and 21st November 2017 and Rockview Royale hotel Abuja on 23rd and 24th November 2017. HEDA, Joint Communique Issued at the End Of 4-Day Training Conference on Tracking Noxious Funds: available at <https://hedang.org/blog/joint-communique-issued-at-the-end-of-4-day-training-conference-on-tracking-noxious-funds/> accessed on 30 Oct 2020; Kent Law School, “Tracking faulty towers: Strategies and techniques for tracing property purchased from proceeds of bribery and corruption in the UK” *Kent Law School News* 28 June 2017 available at <https://blogs.kent.ac.uk/law-news/tracking-faulty-towers-strategies-and-techniques-for-tracing-property-purchased-from-proceeds-of-bribery-and-corruption-in-the-uk/> accessed on 30 October 2020.

Nigerians in diaspora are uniquely placed to note when visitors and public figures from Nigeria have been living beyond their means, or when they are expending unexplained wealth on luxurious good, properties, cars or other high end purchases.

3.11.2: The Imperative of a special Tripartite Cooperation: Institutional cooperation, Training and Operations

There continues to be significant gaps in international cooperation between Nigeria, the UAE and UK on money laundering, foreign corruption and other areas of IFF activity. Areas of acute failure include the exploitation of extractive industries such as the smuggling of precious metals.¹¹² The many instances of high profile bribery, corruption and money laundering scandals, involving PEPs and companies and other enablers in the three countries is significant and consequential. We therefore, recommend bespoke cooperation in anti-corruption law and practice between Nigeria, the UAE and the UK especially in the area of IFF and asset recovery. The study so far has revealed a high degree of bilateral and multilateral obligations under treaties and international law relating to these states and upon which much basis exist for further excellent cooperation. With adequate political will the three countries can indeed introduce a special regime of tripartite cooperation specifically to combat TBML and other IFF. Tripartite cooperation will be particularly useful in dismantling systemic manifestation of IFF.

Apart from creating new platforms, there are other areas of bilateral cooperation that Nigeria would benefit from with respect to each of the countries. For instance, Nigerian investigators including journalists and CSOs would benefit from easier access to company registration records and beneficial ownership details of properties in the UAE and the UK.

There are some areas of direct bilateral importance. For instance, extra focus may be necessary for Nigerian authorities to understand the role played by various actors within the ADGM and DIFC as well as the UAE's free zone areas.¹¹³ Several leading studies of the WCO, OECD and FATF have pointed out the risk factors within the UAE's free trade zones. They include

¹¹² Greenway op.cit. p. 77; Alexander Cornwell, "UAE Doing Too Little to Stem Money Laundering and Terrorist Finance: Watchdog," Reuters, April 29, 2020, <https://www.reuters.com/article/us-emiratesfinancing/uae-doing-too-little-to-stem-money-laundering-and-terrorist-finance-watchdogidUSKBN22B3CF>; and "United Arab Emirates' Measures to Combat Money Laundering and Terrorist Financing," April 30, 2020, available at <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-uae-2020.html>. accessed 28 Jan 2021.

¹¹³ Note our discussions in Chapter 3 on Shell banks (R.18) and Non Profits. Although there are currently no operational FTZs in the U.K, there are indeed a number of ports, which have been authorized in the past, and it is expected that in a post-Brexit, environment, the U.K. could have the freedom to set its own trade policy and thus reintroduce FTZs. See R.M. Crowe, "INSIGHT: Free Trade Zones—a Potential Opportunity for the U.K.?" March 5, 2020, available at <https://news.bloombergtax.com/daily-tax-report-international/insight-free-trade-zones-a-potential-opportunity-for-the-u-k> accessed 24 June 2020.

insufficient customs controls and the insufficient integration of information technology systems by governmental agencies. The ease of setting up companies is also problematic to the extent that it does not engender a robust compliance culture.¹¹⁴

3.11.3: Recommended Nigeria –UK strategies.

- a. UK should rein in or better still put an effective stop to tax havens. The UK has to reduce drastically the formula and modus operandi of secrecy banking in many of these jurisdictions. Tax havens and secrecy jurisdictions are a tool for defrauding other peoples and nations and ought to be exposed for what they really are. The UK has to be sure that the country wants the increasingly visible negative record of these vassal states on the image of the UK. Although the shadiness and opaqueness of tax haven operations might have been largely unknown and anonymous in a previous century, the global community is increasingly educated and enlightened on their negative aspects. It is unedifying for the UK that its history is yet again in the 21st century linked to a system of mass exploitation just like it was in previous centuries with respect to slavery and colonialism. The UK's participation in the spread of misery around the world by playing a central role in IFF is indeed similar in many ways to its participation in colonialism and slave trade in previous centuries.
- b. Both Nigeria and the UK should agree to a system whereby public procurement of contracts excludes companies that operate out of tax havens.
- c. Both countries should share public registries of beneficial owners of companies, trusts and foundations.

3.11.4: Nigeria –UAE strategies and imperatives.

There are some immediate steps that need to be taken by Nigeria and the UAE together to reduce the incidents of IFF between them and there are some steps which the UAE has to take urgently in fulfillment of its international obligations.

- a. UAE banks need better training to fully understand TBML- and customs-related risks. They need to know more about the products traded and shipping routes, and they need access to other detailed records that cover the commerce side of transactions. These issues need to be looked at specifically in relation to imports from Nigeria including gold and other precious stones.
- b. The UAE must work on flushing out bulk cash smuggling and other money laundering offenses identified by the FATF. They must also design a robust reporting framework that will spread out supervisory responsibilities across market participants, such as forwarding agents, shipping agents, clearing agents, importers, exporters, and other relevant actors. Doing so will help reduce the risk of TBML.

¹¹⁴ Kumar opcit., p. 29.

3.11.5: Imperatives of International Cooperation.

Nigeria's fight and the orchestration of international cooperation against IFF ought to start at the subregional and regional level. Thus, the implementation of targeted programmes at the ECOWAS and the AU level is key. UNECA's epoch-making effort under the Mbeki Panel is outstanding in its usefulness but its findings and recommendations must be pursued with greater vigour. Following UNECA's lead the AU must become more proactive and aim to develop a coherent framework for addressing IFF on the continent at the earliest possible period. Although the AU is beginning to show more concern about IFF issues, progress is slow. The continent is in dire need of leadership on IFF and Nigeria because of its historical exposure and experience as the largest victim state is in a position to offer leadership.¹¹⁵ If the 'spiders web' spun by bankers, financial institutions and other powerful actors based in metropole capitals like London, New York and Paris is to be disentangled from the African region, the fight back will have to be sustained and there will have to be courageous and coordinated response particularly from Nigeria and other African states like South Africa Angola and Congo.

3.11.6: Training and Institutional development.

Training and institutional capacity development is an area of distinctive importance. There is a special role to be played by the Central Bank of Nigeria (CBN), which it has clearly not been playing to its ultimate best. Although the CBN appears to be very well resourced, its lapses in preventing IFF are very worrisome. This may be a reflection of a general incapacity of African Central Banks. There is therefore, a good basis to recommend special cooperation between the CBN, the CB UAE¹¹⁶ and the Bank of England. This should involve IFF focused joint training sessions on their mutual legislation, regulations, statistics, bank guidelines, banking operations and payment systems as well as consumer protection and licensing etc.

At the risk of recommending even more institutional structures to join the already myriad national structures within the three countries, this study proposes the need for a trilateral Anticorruption Task force between the UAE, UK and Nigeria. Such a taskforce will be in a position to act as a clearinghouse of special projects, investigations and asset recovery operations. Clearly, the work that needs to be done is complex, extensive, important, increasing and herculean in nature.

3.12: Persuading the UAE and UK to stop receiving.

One of the central tasks before the entire international community is to convince IFF recipient states to stop funnelling wealth towards their shores by a combination of direct and indirect strategies, actions and inactions. This would not be an easy task with respect to both the UAE and the UK. In the case of the UAE, there are stark warnings that Dubai's political economy

¹¹⁵EmmanNnadozie argues that Africa needs leadership and Nigeria must lead the campaign. See The Presidency Presidential Advisory Committee Against Corruption, p.56

¹¹⁶<https://www.centralbank.ae/en>

depends heavily on organized crime, conflict finance and IFF. This is so despite the fact that, the UAE is widely viewed internationally as an upstanding and successful modern state. With the current policies and deficiencies, its successes are growing in leaps and bounds with leading companies locating their regional offices in Dubai. Indeed with 138 out of 500 of the world's largest companies (by revenue) locating their regional headquarters in Dubai and the UAE government appearing polished, cooperative, and willing to embrace anticorruption best practices, how then can the state be convinced towards adopting better behaviour in relation to combating the IFF malaise?¹¹⁷ Indeed, how can the UAE be convinced to change course when its "...comparative advantage as a trade and financial hub relies to a large extent on its openness to dubious characters and transactions".¹¹⁸ In essence why would any country change what appears to be a winning formula?

3.12.1: Persuading a wider number of Receiver states.

Corruption from other lands will inevitably breed corruption at home and expand its base. With the global goodwill and corporate image that the UAE and the UK enjoy they really ought to be at the very top of the league table on the Transparency International Index but they are far from being there. Instead of that there are nagging criticisms that suggest they do not even deserve to be at the current positions they occupy giving the widespread abuses of transparency practices and particularly the positions both countries have in attracting IFF.

There is a case to be made to professionals in Nigeria and of course those in the IFF attracting countries to convince them to mount an effective indigenous campaign for change towards greater transparency both in their fields of operation and in the general regulation of their national economies.

3.13: Persuading enabling Professionals and entrenchment of a Whistleblowing culture in the enabling professions.

A new culture of picking out the bad eggs in the enabling professions is an imperative for change. We must again lay emphasis that for the purposes of our study the principal but the enabling professions we have concentrated on are the legal profession, banking profession/financial profession and real estate professionals. However, many other professions could be critical to any analysis on IFF. For instance, accountants and auditors are particularly crucial to the important task of stemming the tide of IFF. These Professionals hold the frontline of responsibility in establishing due diligence standards and raising ethical awareness, standards and best practices within their associations.¹¹⁹

¹¹⁷ Anthony McAuley, "World's Largest Companies Favour Dubai as Location for Regional Headquarters," National (UAE), March 21, 2017, <https://www.thenational.ae/business/world-s-largest-companies-favour-dubai-as-location-for-regional-headquarters-1.81332>.

¹¹⁸ Page and Vittoriop.cit. p. 96.

¹¹⁹ The global bodies for professional accountants like the ACCA with 227,000 fully qualified members and 544,000 future members worldwide have a central role to play in reinterpreting the future of the profession towards a

3.14: IFF and the requirements of an Asset Recovery strategy

Nigeria's IFF must be traced, seized and recovered in accordance with national and international law. This study demonstrates that Nigeria has had extensive involvement in asset recovery cases and in the return of its stolen funds. The repatriation of the Abacha funds, Alamiyeseigha funds and parts of the OPL 245 scandal funds are examples of these.¹²⁰ Although celebrated cases have been successfully handled involving Nigeria the government, has not established significant or impressive expertise. The recovery of funds have in many cases been undertaken by private lawyers acting as agents for the government. These lawyers have been siphoning off huge fees for their efforts. Examples of these include the OPL 245 case and the Abacha case. This sort of privatised asset recovery approach is not in the best interests of Nigeria. It has to be recommended that Nigeria should create a world class team of government lawyers, backed with sufficient funds, to undertake international asset recovery operations in both the EFCC and ICPC.

A holistic treatment of IFF in the countries under review would inevitably require an interrogation of the efficiency or otherwise of the law and practice of asset recovery. The history of asset recovery operations between the countries is not sufficiently motivating and particular mention must be made of the inordinate delays between the time illicit funds are frozen and the time when they are eventually repatriated. Indeed, there are vast sums yet to be repatriated to Nigeria from both countries despite diplomatic action and the efforts of platforms such as the World Bank's Stolen Asset Recovery Initiative (StAR) programme. Perhaps the greatest injustice is that even when monies are frozen, they remain in the hands of banks that are complicit in the transactions much against the grain of modern wisdom as expounded by the prestigious

departure from the current reality whereby accountants and auditors often aid the practice of IFF. Information and material about the ACCA is available at <https://www.accaglobal.com/gb/en.html> accessed on 08 July 2020.

¹²⁰ Following the successful application for an order requiring Malabu Oil and Gas to pay the Federal Republic of Nigeria the \$85 million frozen in the UK, Mrs. Justice Cockerill ordered that the monies be returned to the Nigerian treasury. (The money had been frozen through the so called Malabu External Restraint Order) that arose from the "unlawful dissipation" by Malabu of monies it obtained through "entering into a corrupt arrangement with an oil consortium" in relation to the allocation of OPL 245 to Shell and Eni in 2011. See *Federal Republic of Nigeria vs Malabu Oil and Gas Limited*, Variation Order, Southwark Crown Court, 12 October 2017. The Federal Government of Nigeria had applied to discharge the External Restraint Order and although the application was refused, but Mr. Justice Edis agreed to vary the ERO in order to allow the \$85 million to be paid over to the FRN in satisfaction of the default judgment it had obtained against Malabu in December 2016. See *Federal Republic of Nigeria v. Malabu Oil and Gas Limited*, Particulars of Claim, High Court, London, 18 October 2016. [2017] EWHC Case No: CL-2016-000631. See also *Federal Republic of Nigeria v. Malabu Oil and Gas Limited*, High Court, London, 18 October 2016 in the High Court of Justice Admiralty Jurisdiction; In December 2016, the Federal Republic of Nigeria obtained a default judgment ordering Malabu to pay \$85 million; *Federal Republic of Nigeria v. Malabu Oil and Gas Limited*, Default Judgment, Admiralty and Commercial Court, December 2016 CL-2016-000631 ; *Federal Republic of Nigeria v. Malabu Oil and Gas Ltd*, Judgment, High Court, London, 15 December 2017 Case No: CL-2016-000631.

recommendations of the Mbeki Reports to the contrary.¹²¹ The idea that such frozen assets should be kept in an escrow account in regional development banks such as the African Development Bank is feasible and equitable.¹²² Retention of the capital in London and Dubai encourages obfuscation of issues and retention of procedures that lean towards late or no return of the funds. Worse still, the emerging practice of imposition of conditionalities on victim-countries by destination countries is indeed an unacceptable impediment to the quick recovery of illicit funds. Nigeria has to aggressively push the dialogue it has been trying to maintain with the UK and UAE and other destination countries to remove the practice of attaching conditionalities to the recovery of illicit funds and assets.

Citizen participation should be built in to prevent instances of accusation and counter accusation of re-looting that typified the return of Alamieyeseigha funds into Bayelsa state. It is indeed true that a fundamental aspect of asset recovery is ownership. For this reason the citizen must be convinced that the process carries them along.

Nigeria should as a matter of principle resist the attachment of conditionalities to the return of recovered assets to the country. The preferred principle and the general rule to be maintained is that the proceeds of crime should be returned to the country of origin. UNCAC as the first international treaty making detailed provision for the return of recovered assets remains commendably the most useful instrument for the development of law and practice of asset recovery.

3.15: Charity begins at home: Radical Socio-Legal and Policy changes for Nigeria.

Nigeria deserves the opportunity to clean up its Aegean stables of corruption at home. It also deserves a much more responsible international community that eschews IFF and which is generally more responsive to international cooperation and asset recovery requests. To achieve these ideals, however, Nigeria must work hard to increase its commitment to an IFF free world by becoming more transparent and accountable within its political and economic space. To do this it must at the very least have the best laws and policies that reduce the opacity and negative practices needed for IFF to thrive. The country must clean up its act and introduce radical reform.

¹²¹ Elizabeth Archibong, "Osinbajo calls for Sanction of financial institutions aiding illicit flow of funds" *Business Day* Jun 5, 2017 available at <https://businessday.ng/uncategorized/article/osinbajo-calls-sanction-financial-institutions-aiding-illicit-flow-funds/> accessed on 23 June 2020.

¹²² The Brookings Institution, "A conversation with President Thabo Mbeki of South Africa and the High-Level Panel on Illicit Financial Flows from Africa" Wednesday, Feb 17, The Brookings Institution Somers Room 1775 Massachusetts Ave., NW Washington, DC. Available at <https://www.brookings.edu/events/a-conversation-with-president-thabo-mbeki-of-south-africa-and-the-high-level-panel-on-illicit-financial-flows-from-africa/> accessed 23 June 2020.

3.15.1: Improved interagency cooperation

IFF affects Nigeria in very direct ways and the fight against it has to be full frontal and coordinated. Nigeria must get its Ministry of Finance, Financial Intelligence Unit, Anti-Corruption Agencies, Nigeria Police Force, Customs and Statistical Agencies together to fight IFF. Although there is a glimmer of hope that Nigerian governments are finally beginning to address the cankerworm of corporate IFF, grand corruption and other forms of unjust enrichment, this study has not revealed any coherent national strategy or coordinated approach against IFF in Nigeria. The Nigerian government for instance, should strengthen and revitalize certain existing institutions such as the Nigeria Commodity Exchange.¹²³ This body for instance, is critical to the tracking of IFF transactions through its risk management functions and mechanisms in commodity exchange operations.¹²⁴ There is an obvious need for a keener interagency cooperation that will help stem the flow of money out of Nigeria. Overall, Nigerian regulatory agencies should be alert and keyed in to their responsibilities and pursue the objectives established by their mandates in the national interest.

3.15.2: Implementation of a Non-Conviction Based Asset Forfeiture.

The emerging jurisprudence surrounding non-conviction based asset conviction in Nigeria is commendable and in line with the progressive domestic anticorruption law and practice of the UK. Just like the EITI movement, the non-conviction based asset forfeiture regime is perhaps one of the ways the UK's anticorruption philosophy positively influenced Nigerian law and policy. There are however, also good antecedents in Nigerian law. Section 17 of the Advance Fee Fraud and other Related Offences Act (AFFA) 2006 had introduced a Nigerian adaptation of a civil forfeiture procedure. There is a persuasive argument that AFFA also complies with the anti-corruption standards required of member states under the UNCAC.¹²⁵

There are excellent reasons to argue for the adoption of non-conviction asset based forfeiture by Nigeria. Nigeria as a party to the UNCAC (2003) convention has accepted the global standards on anticorruption laws including the progressive provisions on asset recovery and Non-Conviction Based Asset Forfeiture (civil) procedure. Art 54 (1) (c). It is important to note that Nigeria itself has benefitted from foreign non-conviction based asset forfeiture regimes.

¹²³ Information and materials about the he Nigeria Commodity Exchange (NCX) was originally incorporated as a Stock Exchange on June 17, 1998. It commenced electronic trading in securities in May 2001 and was converted to a commodity Exchange on August 8, 2001 and brought under the supervision of the Federal Ministry of Commerce. Available at <https://nigeriacommex.com/> 17 July 2020.

¹²⁴ The Presidency Presidential Advisory Committee Against Corruption op.cit., p. 62.

¹²⁵ Harrison Ogalagu and Peter Okoyomoh, "The Jurisprudence Of Non-Conviction Based Asset Forfeiture (Civil Forfeiture) In Nigeria: Constitutionality Of The New Knight-Errant Innovated Under the UNCAC", Tope Adebayo LLP Featured Insight June 19, 2020 available at <https://www.topeadebayollp.org/wp-content/uploads/2020/06/NON-CONVICTION-BASED-ASSET-FORFEITURE.pdf> accessed on 09 July 2020

3.15.3: Professional Rules of Conduct

The various professional groups in Nigeria (as indeed it is the case also of those in the UAE and the UK) may have to revisit their professional rules and ethic documents. These will involve the professional associations of bankers, lawyers, accountants, auditors, estate agents etc. There is the need to amend some of these instruments by infusing them with clearer and more stringent provisions on the demands of integrity and ethical discipline.

3.15.4: Stronger financial regulatory framework

To improve upon the performance of its fiscal and financial sectors and to reduce IFF, Nigeria must take steps towards improving domestic stability, financial regulation and reduction of microeconomic instability and money laundering. The entire financial architecture of the country must work in harmony to block all channels of IFF. It is of utmost importance for Nigeria to continue to subscribe to and adhere to the FATF recommendations. The country's commercial and trading system as well as financial institutions should aim at reducing to the barest minimum the practice of physical movement of cash and use of large volumes of physical cash in the purchase of valuable goods.¹²⁶

3.15.5: Extraterritorial jurisdiction and more internationally proactive institutions.

Nigeria has a well-developed network of anticorruption institutions that would be the envy of many other developing states. The position of this study is that their numbers should not be rationalised or reduced as has been advocated in several quarters. However, the Nigerian anticorruption institutions and Nigerian legislation are mostly inward looking and perhaps not sensitive and proactive enough to combat external threats in line with emergent international practice. Thus, criminal conduct, bribery schemes and corporate scams that are hatched outside the country but against the country's interests including those of its nationals need to fall within the jurisdiction of national law. For this to happen, the National Assembly should introduce FCPA and UK Bribery Act (2010) style legislation.¹²⁷ Indeed, Nigeria can go further and based upon the protective jurisdiction principle of international law, foreigners who hatch IFF tactics abroad should fall within the criminal jurisdiction of Nigeria as long as that conduct comes into effect in Nigeria and the act(s) is a crime in whatever foreign country they are in.¹²⁸

Nigeria's policing and anti-corruption agencies must become better at harnessing and using the utility of anti-corruption legislation and institutions based outside the country. They must become more diligent in following leads that expose the pathways of IFF to and from the country.

¹²⁶ The Presidency, (Presidential Advisory Committee Against Corruption), op,cit., p. 31.

¹²⁷ See above Chapter 5.4.1.

¹²⁸G. Oduntan, "International Moral Legalism and the Competence over Prosecution of Corruption Crimes", *African Journal of Law and Criminology*, (2011) pp. 89-91.

Being proactive as a regulatory or security body can translate into huge benefits for the Federal purse because lost revenue can be recouped and valuable stolen assets returned.

3.15.6: Trade Based Money Laundering and the need for a fit for purpose Custom Agency in the 21st Century.

As concluded earlier the largest proportion of Nigeria's IFF losses are due to trade and business practices especially those by multinationals. In today's global economy, MNCs have perfected ways of interacting with key regulatory authorities to the best of their commercial advantages by performing import and export operations in a variety of legal settings. Customs administration plays a pivotal role when it comes to control, facilitation and regulation of international trade.¹²⁹ Unfortunately, the sort of IFF that MNCs engage in all over Africa and the developing world very often relies on complicity of custom agents.¹³⁰ The Nigeria Customs Service (NCS) is particularly in dire need of attention in terms of failing in its own contributions to the prevention of IFF. The regularity of MNC bribery scandals that involve bribery of the Nigerian Customs officials is clearly perturbing.

Clearly therefore, the NCS must be specifically targeted for reform to combat IFF. The NCS must endeavour to work more collaboratively with other government agencies in all approved ports and border stations. Considering the indications of IFF damage found in the trade between Nigeria, the UAE and the UK, specialized risk assessment tools are very much in need.

We therefore, strongly recommend immediate adoption of blockchain technology in Nigerian customs operations. Blockchain improves compliance, trade facilitation, and fraud detection (including curbing of illicit trade through the misuse of Bitcoins and other cryptocurrencies).¹³¹ It is perhaps for these reasons that the World Customs Organization (WCO) has endorsed blockchain technology for Customs and other border agencies and the governments of Japan, China and the USA have adopted it for their customs and border operations.¹³²

¹²⁹ E. Mashiri, F.Y. Sebele-Mpofu, Illicit trade, economic growth and the role of Customs Vol 9 *World Customs Journal* issue 2, (2015) pp. 38-50.

¹³⁰ Boiko Todorov, Ognian Shentov, Aleksandur Stoianov eds. *Corruption and Illegal Trafficking: Monitoring and Prevention : Assessment Methodologies and Models of Counteracting Transborder Crime* 2nd Revised edition (Sofia: Centre for the Study of Democracy, 2000) p. 8.

¹³¹ Yotaro Okazaki, "Unveiling the Potential of Blockchain for Customs" (June 2018) WCO Research Paper No. 45 Available at <https://tradenews.com.ar/wp-content/uploads/2018/12/Blockchain-aduana.pdf> accessed on 17 July 2020; PwC How blockchain technology could improve the tax system, PwC UK (161205-171727-LL-OS) (2017) available at: <https://www.pwc.co.uk/issues/futuretax/how-blockchain-technology-could-improve-tax-system.html> accessed on 16 July 2020.

¹³² A. Antonovici, (2017), 'Japan, Singapore Start Blockchain Pilot to Improve Trade Links', Cryptovest website: <https://cryptovest.com/news/japan-singapore-start-blockchain-pilot-to-improve-trade-links/> accessed on 17 July

3.15.8: General Institutional and Infrastructural Capacity Development.

The perceived capacity deficit in Nigeria identified in the Mbeki Report must be rectified.¹³³

The capacity areas requiring urgent acquisition are as follows:

- i) “Soft capacity”: change in this area effectively requires a bureaucratic mind-set change. Top-level commitment, leadership skills, normative development and culture are of importance.
- ii) Institutional and regulatory framework: improvements here would require qualitative changes to monitoring and deterrence capacity. Just as important in relation to this are institutional coherence and institutional cooperation.
- iii) Human capacity development: This includes appropriate staffing strategies to retain well-trained staff across agencies and ministries.¹³⁴

3.15.9: Thinking outside the box strategies and other novel interpretations and solutions.

The immensity of the Nigerian problem with IFF would require the ideas and strategies we have identified above as well as many other novel indigenous solutions. Nigeria needs, for instance, to nurture its own indigenous big businesses and multinationals to take up the many opportunities in its massive internal market space and across the African continent. To actualize its potentials and economic destiny the country must indeed spurn its own multinational companies that will explore other parts of Africa and beyond. Greater transparency should therefore, be embedded into the market economy. Naturally the country’s notoriously difficult credit systems would hamper such growth.¹³⁵ The country must thus, consider ways to retain and unlock the informal capital which tends to flow abroad and percolate into foreign hands.

There is, indeed, something to be said for the idea of appropriate and strategic amnesty. It is important to encourage Nigerians to invest their money in Nigeria’s industries and real estate rather than ferrying billions off to banks and luxury properties in Dubai and London. One academic in fact, suggests that when it comes to determination of punishments and sanctions leniency should be exercised for accused persons who have invested IFF money within

2020; Miranda Wood “China to use blockchain for cross-border customs clearance” available at <https://www.ledgerinsights.com/china-blockchain-cross-border-customs-clearance/> accessed on 17 July 2020. *Ledger Insights: Enterprise blockchain news* available at <https://www.ledgerinsights.com/china-blockchain-cross-border-customs-clearance/> accessed on 17 July 2020.

¹³³ UNECA op.cit., pp. 36-37, 43-44, 47.

¹³⁴ The Presidency Presidential Advisory Committee Against Corruption op.cit., p. 59.

¹³⁵ The structure of lending in Nigeria include: the formal sector (commercial banks, microfinance institutions), Semi formal sector (moneylenders, hire-purchase and pawnbrokers, Cooperative societies, Fintech Start-ups) and informal sector (black market, moneylenders, hire purchasers vendors and pawnbrokers, Rotating Savings and Credit Associations, customary moneylenders, family and friends, vendor and sales credit). Omedeop.cit., pp. 31-63.

Nigeria.¹³⁶ This increasingly popular but difficult suggestion is based on the understanding that corruption is endemic to the system of global political capitalism.¹³⁷ This explains why London, New York, Paris and other major Western capitals tend to condone inward IFF flows.¹³⁸

¹³⁶ Prof. ObehiAlegimehen, University of Benin - takes the view “that it may be better to generally encourage people to invest their money in the country”. The Presidency Presidential Advisory Committee against Corruption, p. 65.

¹³⁷ Branko Milanovic, *Capitalism Alone: The Future of the System that Rules the World* (Harvard: Harvard University Press 2019) pp. 2-4, 34, 91.

¹³⁸ The other western capitals and financial hubs, include Hong Kong, New York, Singapore, Toronto, and Vancouver. See Page and Vittora p. 41; See also “No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts,” Transparency International Canada, 2016, <https://www.yumpu.com/en/document/read/58031165/no-reason-to-hide/5>; “Opacity: Why Criminals Love Canadian Real Estate (And How to Fix It),” Transparency International Canada, 2019, <https://www.readkong.com/page/opacity-why-criminals-love-canadian-real-estate-9000884?p=1>; Caroline Binham, “UK Money Laundering Reports Hit Record Level in 2018,” Financial Times, January 10, 2019, Carnegie Endowment for International Peace 119 <https://www.ft.com/content/15aebf9e-0548-11e9-99df-6183d3002ee1>; and “Towers of Secrecy: Piercing the Shell Companies,” New York Times, 2019, <https://www.nytimes.com/news-event/shell-company-towers-of-secrecy-real-estate>.

SECTION 4

4. GENERAL CONCLUSIONS AND REMARKS.

Any appreciable understanding of the depth of the IFF problem as it affects Africa and other developing countries will come to two unassailable conclusions. First, IFF destroys the economic prospects and social and political life of developing states. Secondly, IFF is pressed to the service of certain richer states and economic jurisdictions and it greatly enriches those countries that have chosen to capture illicit funds and assets. Nigeria is a prime example of victim state in this dark game of illicit monopoly capital. The UAE and the UK especially with respect to Nigeria unfortunately are examples of IFF receiver states. Dubai and London feature prominently in the macabre story of international IFF damage. Both capitals act like opportunistic lightning rods tapping and conducting economic life away from the satellite victim state like Nigeria to themselves as metropolises of financial and political power. These two states do not however even represent the most of the damage occurring to Nigeria via IFF. There are other major countries that do similar and sometimes worse damage. The lessons and solutions developed from this study can be applied to many other satellite-metropole relationships of exploitation that Nigeria finds itself embedded in across the globe. Fighting itself free from such relationships of exploitation is an existential struggle for Nigeria just like many other developing states.

There should be no doubt that the position countries like the UAE and the UK occupy, as IFF receiver states is deliberately orchestrated. This is because historically the mechanisms of attaining and retaining receiver state status in the international system has always been based on mischief. In other words Dubai's "reluctance to comprehensively address its role in global illicit financial flows is a deliberate choice and not borne out of a lack of capacity".¹³⁹ The acquisition of the status of being a receiver state does not happen by default. It is a coveted and even contested position in the international financial system. The tools such states survive on are unique to their type and the services they render are equally unique, mischievous and contrived. The UAE and the UK appear to be practised and skilled at utilising and achieving primacy in these areas. Their tools require a honed relationship with other dramatis personae needed to function as receiver nations. Over the decades, these include coordination with other receiver jurisdictions –tax and secrecy jurisdictions. It also includes rules that permitted relationships with managed banks or shell banks as an offshore speciality. The status of an IFF receiver state involves complicity of a compliant legal Bar and bench sometimes working in tandem with all the other enablers. It even includes an understanding and compliant press, elite intelligentsia and ideally a complacent general population whose complacency is smoothed over by a comfortable lifestyle that is sustained by the inimical benefits of IFF.

¹³⁹ Page and Vittori, Challenges and Recommendations op.cit., p. 99.

The IFF problem in international relations goes beyond the three states focused upon in this study. At a more base level, the regulations in many western countries that are supposed to discourage and prevent money laundering and other IFF are simply not fit for purpose.

The study concludes that despite the intricate web of legislation, public international law, international trade law and international commercial law against IFF, the law has been unable to achieve its true potentials for the common good of mankind.

The argument that suggests itself is that the West has deliberately underdeveloped the potentials of these regimes to properly regulate IFF. This underdevelopment was achieved through strategic actions and inactions by certain economically powerful occidental states.¹⁴⁰ Over the few decades the UAE has come to benefit from this existing state of affairs and joined the league of 'privileged receiver states. In this position it is protected by the structures of international imperialism and enjoys the tolerance and client state status relationship particularly to the United States and the UK.

It is also argued that this state of underdevelopment of the law and practice around the subject of IFF is designed to be permanent, or will become permanent, unless steps are taken in due course to reverse the democratic deficit that pervades the making and implementation of international laws and particularly the implementation of sanctions on receiver states.

As a technical possibility, IFF can be stopped, tracked and returned with the domestic and international laws that exist today. The UAE and the UK parade an impressive, array of anti-corruption and anti-money-laundering regulations. The technological and institutional capacities are impressive and at least in the case of the UK is comparable to some of the very best in the world even as there is need for some improvements. The true scandal is that, their actual commitment to dealing with this current international problem amount to what Nicholas Hildyard helpfully submits as "all hat and no cattle".¹⁴¹

The harsh reality is that Nigeria may never even find out just how many hundreds of billions of looted assets it has suffered over the decades and certainly since its independence as a sovereign state. The chances of having the losses restored in meaningful ways are extremely low. Sadly, even recent scandals with ample documentary trail have led to little or no asset recovery. The practice of some Western nations including the UK in insisting on exacting and retaining arbitrary sums as during asset recovery requests from weaker states is particularly abhorrent. Nigeria and other developing state have a duty to posterity to resist this practice. Similarly, the practice of demanding and attaching conditionalities outside the confines of international law to

¹⁴⁰ Oduntan, *op.cit* (2009) p. 92.

¹⁴¹ This was the title to the talk given by Nicholas Hildyard, Co-Director, The Corner House in one of the workshops conducted during the completion of this funded project. See Nicholas Hildyard, "All Hat and No Cattle: The scandal of the West's anti-money-laundering regulations" Presentation to Conference on Agenda Setting for Citizens' Interaction with Stolen Assets Recovery, Abuja, 3rd July 2019.

the return of illegally transferred wealth is abominable. These practices are not products of law and equity but are expressions of the asymmetries in international relations, which permit a certain group of privileged states to add insult to the injuries of weaker states in the sheer context of things.

The UK's record is particularly egregious and deserving of censure. The role of the UK in draining out a country like Nigeria revealed itself in this study through the peeling back of the slim veneer that shields much of the mucky business out of sight. As the ex-colonial power from which Nigeria gained its political independence, the UK arguably owes fiduciary duties in law and equity far beyond the actual political and economic behaviour it has exhibited towards the Nigeria. Nigeria is the UK's most economically and demographically powerful ex-colonial territory in Africa. Thus, Nigeria's overall success ought to be the UK priority. On moral grounds alone, the UK ought not be seen to return to the scene of its colonial schemes to continue abstractions of wealth under questionable terms. Equity demands that the UK's relationship with Nigeria and its attitudes towards the country's commercial and financial interests should be in a sense *nec vim nec clam nec precario* (*neither secretly, nor by force, nor with license*). In other words if there is one country that the UK owes a duty to help secure its financial flows within legitimate constraints, that country would be Nigeria. Unfortunately the opposite appears to be true. Despite national and international regimes and promises to tighten up the system, little has been done by the UK to actually stem IFF flows from Nigeria. The fact is, although, the UK has a special relationship and duty of good will to the entire commonwealth, Nigeria was its biggest colonial project in Africa. If Nigeria fails as a result of instability and insecurity due to the negative effects of IFF among other reasons, the entire West African region would be thrown into a peculiar chaotic mess, the sort that may take decades to recover from.

Part of the problem on the UK's part is that there are far too many powerful financial interests that benefit immensely from the current system of exploitation. MNC's, businesses, banks, financial institutions as well as politicians on both sides appear to benefit from the continuance of IFF. There is, therefore, too much money to be made in leaving things much the way they are than to bring the system under control. There is also the argument that the UK Treasury particularly in a post-Brexit world may actually be too scared of losing tax receipts from the beneficiaries of IFF. The government's interests to keep a steady flow of finances towards its capital, London's and to maintain its pre-eminent position as a global financial centre is all too powerful. In essence, the deficit of action and political will is explained by the predominance and pre-eminence of those benefiting from inaction or at least slow changes in implementation of the emergent applicable legal regime.

Many of these issues relate to the reasons for the inaction by the UAE as well. Certainly in both states the problems are further exacerbated by timid and pusillanimous enforcement by governmental institutions. Nigeria on its own part must fight good battles against corruption at home and win them. The saying "charity begins at home" has a particular usefulness in that the

first line of defence in stoppage of the leakage of Nigeria's wealth abroad is to make sure that rampant acquisition of illicit wealth is reduced to the barest minimum. Nigeria needs to prosecute its top corporate thieves and all their enablers more efficiently. Examples must be made of the management of MNCs and banks that are implicated in corruption in Nigeria. One of the surest ways to deter engagement in IFF transfers is to increase the rate of conviction and custodial sentences for top executives who are found to have participated in TBML, tax evasion schemes, bribery and corruption or who have facilitated the laundering of funds.

Much more vigorous engagement strategies and action is needed in the area of south-south cooperation. It suffices to reiterate that IFF are inherently international. There is therefore, a need to strengthen alliances with other developing countries. Commitment to secure cooperation in combatting corruption must be secured in order to counter the imperialism of the global North. South-South cooperation is also needed to place the issues of IFF and asset recovery on the global agenda. Developing states must fight to have a more egalitarian, solutions- based path, which gives stolen wealth and assets back to victim states with little rancour. Success in this area gives more traction to African states in negotiations over the return of their assets. It has been suggested that a good starting point might be the newly created African Caucus which has the aim to push Africa's anti-corruption interests within the UN Convention Against Corruption.¹⁴²

Governments and the elite structures of the UAE and the UK need to engage in soul-searching discussions at home and between themselves. The proclivities of both countries to engaging in attraction of IFF and their status as receiver state certainly cannot be a satisfactory position. Although both countries have become adept at public relations exercises and image-laundering, history will not judge the countries well if things continue as they are presently. There is a need for anti-corruption campaigners in both countries to reach out to each other in order to put a stoppage to the destruction of other parts of the world for their own benefits. A similar North-to-North dialogue is required to take place between those other countries of the global North that have a problem with IFF. This will include tax havens and secrecy jurisdiction assisting the developed receiver states in facilitation of IFF. The richer and more powerful states are also not immune from some of the debilitating consequences of a world, which travels on the jet stream of corruption. The immigration crisis in many parts of the developed world which also affects the UAE is created by people fleeing poverty, despondency and instability generated by the effects of corruption at home and in the developing world. Increasingly even the middle class can no longer afford buying property in London, in part, because of the flood of illegal money into property markets. There is therefore, a lot of self-interest in collaboration among the states of the global North to reduce IFF.

Just as important is the development of cooperation between the global south and the global north, which we highlighted above. Thus, greater collaboration between CSOs,

¹⁴² Nick Hildyard p. 7.

intergovernmental organisations and international organisations are all-important in addressing the type of corruption at hand. Indeed, it will be very desirable for a certain *esprit de corp* to develop among the national regulatory agencies and prosecutorial agencies between and among the developing and developed states. Collaboration between Nigeria and UK regulatory bodies has stepped up since the early 2000s and has increased steadily since. Ideally, these multisector collaborations will translate into long-term relationships of trust and solidarity that will make the 21st century a much better time to eradicate rampant IFF.

Nigeria has a sacred duty to its past, present and future generations to remove itself as an item from the menu of IFF receiving states. This is not only a sacred duty and task that must be done; it is one with an alarming urgency to it. Achieving this is perhaps the only way the country may remain one single corporate body and sovereign state by the middle of the 21st century. To this end, Nigeria like most African states must very keenly watch out for modern day equivalents of bargains of valuable concessions in exchange for mirrors and gin. Unfair contracts that are blatantly slanted towards the interests of western superpowers are very much part and parcel of IFF as we argued in our conceptualisation of a wider normative and developmental view of IFF phenomena in Chapter 2.¹⁴³ It is indeed important to finally put a stop in this century to Lugardian territorial and mining concessions purchased for the present of old pairs of boots.¹⁴⁴

It is hoped that this study has contributed to the understanding of the nature and extent of damage IFF has caused to Nigeria and other developing countries. It would be even better if as a result of the study and the ideas and discussions pursued therein, things change for the better and are never the same again. It is indeed hoped that the entire project (of which, this study forms a part), would illuminate in a qualitative and lasting manner the understanding of key issues in international economic law. Hopefully it will assist stakeholders, both within and outside the country, in preventing further damage done to Nigeria by IFF. More importantly, it is hoped that the study leads to a reversal of the corrosive effect of IFF on the development of Nigeria and that the country as a result becomes a much better place for MNCs from UK and UAE and other global firms to operate in ethically and profitable manner.

¹⁴³ See above 2.0: Conceptualization of the Scope of IFF.

¹⁴⁴ See above p. 17. Supra note 16. See also Oduntan (2009) pp. 118 -120.